4-164

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~482~~. 233 40

DE WITT C. LAWRENCE, CYRUS J. LAWRENCE, DARIUS W. LAWRENCE, WILLIAM G. WILEY, AND WAITE TALCOTT, APPELLANTS,

vs.

GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. HOYT, A. SCOTT SLOAN, AND THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED SEPTEMBER 3, 1874.

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INDEX.

	Original.	Print.
Bill of complaint and exhibits	3	1
Subpœna	95	60
Marshal's return	96	61
Motion for an injunction	97	61
Order denying injunction	98	62
Demurrer	99	62
Decree	101	64
Bond on appeal	101	64
Certificate to transcript	103	65

1 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the western district of Wisconsin, begun and held according to law, at the city of Madison, in said district, on the first Monday, being the first day of June, A. D. 1874; present and presiding, the honorable James C. Hopkins, U. S. district judge;

Among other the following proceedings were had, to wit:

DE WITT C. LAWRENCE, CYRUS J. LAWRENCE, Darius W. Lawrence, William G. Wiley, and Waite Talcott
vs.
GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. HART, A. Scott Sloan, and The Chicago and Northwestern Railway Company.

Be it remembered that heretofore, to wit, on the fourth day of said term, to wit, on the fourth day of June, A. D. 1874, came the above-named complainants, by C. B. Lawrence, their solicitor, and filed their bill of complaint as follows, to wit:

Bill of complaint.

UNITED STATES OF AMERICA,
Western District of the State of Wisconsin:

To the judge of the circuit court of the United States for said district;

Your orators, De Witt C. Lawrence, Cyrus J. Lawrence, and Darius W. Lawrence, who are citizens and residents of the State of New York, composing the firm of Lawrence Brothers and Company; W'm G.
2 Wiley, who is a citizen and resident of the State of New York; and Waite Talcott, who is a citizen and resident of the State of Illinois, and who are stockholders in a corporation known as the Chicago and Northwestern Railway Company, in behalf of themselves and such other stockholders as may desire to become parties complainant to this bill, bring this their bill against George H. Paul, Joseph H. Osborn, and John W. Hoyt, who are citizens and residents of the State of Wisconsin, and railroad commissioners of said State, and against A. Scott Sloan, who is a resident and citizen of said State of Wisconsin and the attorney-general of said State, and against the Chicago and Northwestern Railway Company, which is a body corporate and a citizen and resident of the State of Wisconsin, and, thereupon, the said complain and show unto your honor that they are stockholders in the Chicago and Northwestern Railway Company in the manner following:

Your orators, Lawrence Brothers & Company, are the holders and owners of 3,725 shares of the stock of said company; your orator, William G. Wiley, is the holder and owner of 1,005 shares of the stock of said company; your orator, Wait Talcott, is the owner and holder of four shares of the stock of said company.

Your orators show to honor that the said Chicago and Northwestern Railway Company was organized in the manner following:

The Wisconsin and Superior Railroad Company was duly organized under and in pursuance of an act of the legislature of the State of Wis-

consin, approved November 3rd, A. D. 1856, entitled "An act to execute a trust created by an act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, by incorporating the Wisconsin and Superior Railroad Company, and granting a portion of said lands thereto, a copy of which act is hereto annexed, marked Exhibit A, and made a part of this bill, and your orators specially refer to said copy for a description of the powers, franchises, and authority given to said company by the terms of the act, under which the same was incorporated.

3 Your orators further show to your honor that the Madison and Beloit Railroad Company was duly incorporated under and in pursuance of an act of the legislature of Wisconsin, approved on the 19th day of August, A. D. 1848, entitled "An act to incorporate the Madison and Beloit Railroad Company," a copy of which act is hereto annexed, marked Exhibit B, and made a part of this bill; and your orators specially refer to said copy for a full statement of the powers and franchises conferred upon said Madison and Beloit Railroad Company by the terms of the act under which the same was incorporated.

Your orators further show to your honor that the charter of the said last-mentioned company was amended by an act of the legislature of the State of Wisconsin, approved February 4th, 1850, a copy of which is here*by* annexed, marked Exhibit C, and made a part of this bill, and special reference is made to said copy for a description of the change made in the original act of incorporation by said amendment.

Your orators further show that the act to incorporate the Madison and Beloit Railroad Company was further amended by an act passed by the legislature of the State of Wisconsin, approved February 9th, 1850, a copy of which is hereto annexed marked Exhibit D, and made a part of this bill; and that the said Madison and Beloit Railroad Company was duly organized with all the powers and franchises conferred upon it by said several acts, for a particular description of which reference is hereby made to the exhibits aforesaid.

And your orators further show that, by the said last-mentioned amendment, the name of said Madison and Beloit Railroad Company was changed to that of the Rock River Valley Union Railroad Company, and that the charter of said company was further amended by an act of the legislature of said State of Wisconsin, approved March 11th, 1851, a copy of which is hereto annexed, marked Exhibit E, and made a part of this bill, and reference is made to the same for a full statement of the terms of said amendment.

4 Your orators further show to your honor that the Illinois and Wisconsin Railroad Company, in the State of Illinois, was *was* a body corporate, duly incorporated under and by virtue of an act of the general assembly of the State of Illinois, approved February 12th, 1851, a copy of which is hereto annexed, marked Exhibit F, and made a part of this bill; that the capital stock of said company was consolidated with the capital stock of the Rock River Valley Union Railroad Company in the State of Wisconsin, and the two companies were made one, and the affairs and property of the two companies were placed under the direction of one board of directors under and in pursuance of the terms and provisions of an act passed by the legislature of the State of Wisconsin, approved March 10th, 1855, entitled "An act to authorize the railroad companies named therein to consolidate their capital stock," a copy of which is hereto annexed, marked Exhibit G, and made a part of this bill.

Your orators further show that by virtue of the provisions of said act,

the said companies were consolidated in the manner provided in said act, on the 30th day of March, A. D. 1855; that the name adopted by said consolidated company was the Chicago, S't Paul and Fond du Lac Railroad Company; that the said Illinois and Wisconsin Railroad Company, in the State of Illinois, had full power, by virtue of its charter, to become a party to said consolidation in the manner and form aforesaid, as will more fully appear from the charter of said company, a copy of which is hereto annexed, marked Exhibit H, and made a part of this bill.

Your orators further show to your honor that the property and franchises of the said Chicago, S't Paul and Fond du Lac Railroad Company were afterwards, to wit, on the 2d day of June, 1859, sold, under and by virtue of the power contained in certain deeds of trust which had, before that time, been given by said company to secure its indebtedness, and that the purchasers of the property and franchises of said company became incorporated in the State of Wisconsin on the 6th day of June, A. D. 1859, under and by virtue of the provisions of an act of the legislature of said State, which was approved March 14th, 1859, a copy of which is hereto annexed, marked Exhibit I, and made a part of
5 this bill, and reference is hereby made thereto for a full statement of the terms and conditions of said act, and the purchasers of the property and franchises of the said Chicago, S't Paul and Fond du Lac Railroad Company were also duly incorporated in the State of Illinois on the 6th day of June, 1859, under and by virtue of an act of the general assembly of the State of Illinois, approved February 19, 1859, entitled "An act to authorize the sale of the Chicago, S't Paul and Fond du Lac Railroad Company, and to enable the purchasers thereof to form a corporation, a copy of which is hereto annexed, marked Exhibit J, and made a part of this bill, and reference is hereby made thereto for a statement of the terms and provisions of said act.

Your orators further show to your honor that the name of the company, so formed by the purchasers of the property and franchises of the said Chicago, S't Paul, and Fond du Lac Railroad Company, was the Chicago and Northwestern Railway Company.

Your orators further show to your honor that an act was passed by the legislature of the State of Wisconsin, approved March 8th, 1862, by which was conferred upon the said Chicago and Northwestern Railway Company all the rights, privileges, powers, and authority contained in the charter of the Chicago, S't Paul and Fond du Lac Railroad Company, and the Wisconsin and Superior Railroad Company, to which said Chicago and Northwestern Railway Company was the successor, as by the provisions of said act, a copy of which is hereto annexed, marked Exhibit K, will more fully and at large appear.

Your orators further show to your honor that the Galena and Chicago Union Railroad Company was a corporation of the State of Illinois, duly incorporated and organized under and by virtue of the provisions of an act of the general assembly of said State, approved January 13, 1836, entitled "An act to incorporate the Galena and Chicago Union Railroad Company, a copy of which is hereto annexed, marked Exhibit L, and made a part of this bill.

Your orators further show to your honor that the said Galena and Chicago Union Railroad Company and the said Chicago and Northwestern Railway Company consolidated their property and franchises
6 into one corporation, by the name of the Chicago and Northwestern Railway Company, and that said consolidation was made in pursuance of the laws of the State of Wisconsin and the laws of the State of Illinois; that afterwards, to wit, on the 5th day of February, 1865,

the consolidation of said companies was approved and ratified by an act of the legislature of the State of Illinois, entitled "An act to extend the powers of the Chicago and Northwestern Railway Company," by which act it was provided that said company, as then consolidated, should have and exercise all the powers theretofore conferred by the laws of said State or of any other State upon the Chicago and Northwestern Railway Company, the Galena and Chicago Union Railroad Company or any other company consolidated with it, as will more fully and at large appear by the act aforesaid, a copy of which is hereto annexed, marked Exhibit M, and made a part of this bill.

Your orators further show to your honor that, by virtue of said consolidation, the said Chicago and Northwestern Railway Company became vested with all the powers, privileges, and franchises which had theretofore been conferred by the laws of the State of Illinois upon the Chicago and Northwestern Railway Company, the Galena and Chicago Union Railroad Company, or by the laws of the State of Wisconsin upon the said Wisconsin and Superior Railroad Company or upon the said Chicago, S't Paul and Fond du Lac Railroad Company, or upon the said Chicago and Northwestern Railway Company, among which powers was the authority and right to demand and receive such sums of money for the transportation of persons and property upon their said railroad, and for the storage of property, as the said railway company, from time to time, should deem reasonable.

And your orators further show that an act was passed by the legislature of the State of Wisconsin, approved February 17, 1871, entitled "An act to authorize the Chicago and Northwestern Railway Company to consolidate with the Baraboo Air-Line Railroad Company and other railroad companies named therein, which act is published in the private and local laws of the State of Wisconsin for the year 1871, page 106, a copy of which is hereto annexed, marked Exhibit N, and made a
7 part of this bill; that, by the terms of said act, the Chicago and Northwestern Railway Company, was authorized and empowered to consolidate its stock, property and franchises with the stock, property, and franchises of the Baraboo Air-Line Railroad Comapny, and with certain other companies therein named; that such company, when consolidated, should have, and exercise all the powers then conferred by the laws of the said State of Wisconsin, or of any other State, upon either of said companies, and should have power to construct and operate a line of railroad so as to connect the main line authorized to be constructed by the Baraboo Air-Line Railroad Company, with the line of any railroad or railway line in Wisconsin west of the range-line dividing ranges two and three east of the fourth principal meridian, and to operate the whole or any portions of the line, or either or any portions of the same, in the said acts named, as one consolidated line. And said company was also, by said act, authorized, in its corporate capacity, to borrow any sum or sums of money, and to make, execute, and deliver, in or out of said State of Wisconsin, all necessary writings, notes, or bonds, to secure the payments thereof, or for any other purpose, and to make, execute, and deliver a mortgage or mortgages upon the whole, or any portion of its property to secure the payment of such writings, notes, or bonds.

Your orators further show to your honor that the said Baraboo Air-Line Railroad Company was consolidated with the said Chicago and Northwestern Railway Company, under the authority and in pursuance of the provisions of the said act of ; and that said consolidated company acquired all the powers then conferred by the laws of the said

State of Wisconsin, or of any other State, upon either of said companies; that said consolidation was made on or about the 10th day of March, 1871.

Your orators further show to your honor that the said Chicago and Northwestern Railway Company had, by the terms of said consolidation, and by the issue of its own bonds, as hereinafter stated, became indebted to various persons, as follows:

Upon preferred sinking-fund bonds, Chicago and Northwestern Railway Company, dated July 1st, 1859, payable 1865	$1,245,500
Upon coupon bonds of the Chicago and Northwestern Railway Company, dated August 1st, 1861, payable 1883	$755,000
Upon general first-mortgage bonds of the Chicago and Northwestern Railway Company, dated July 1, 1859, payable 1855	$3,588,000
Appleton extension bonds of the Chicago and Northwestern Railway Company, dated November 1st, 1860, payable 1885	$148,000
Green Bay extension bonds of the Chicago and Northwestern Railway Company, dated April 1, 1860, payable 1885	$289,000
Seven per cent. equipment bonds of the Chicago and Northwestern Railway Company, dated January 1, 1863, payable 1874	$101,000
First-mortgage bonds of the Galena and Chicago Union Railway Company, dated May 1st, 1855, payable in 1875.	$948,000
Mississippi River bridge bonds of the Chicago and Galena Union Railroad Company, dated January 1, 1864, payable in 1884	$200,000
Bonds of the Galena & Chicago Union Railroad Company, issued for the purchase of the Elgin and State-Line Railroad Company, dated November 2nd, 1863, payable in 1878	$135,000
First-mortgage bonds of the Peninsula Railroad Company, in Michigan, dated May 5th, 1864, payable in 1898	$695,000
First-mortgage bonds of the Beloit and Madison Railroad Company, dated January 1st, 1863, payable in 1888.	$324,000
The consolidated sinking-fund bonds of the Chicago and Northwestern Railway Company, dated January 16th, 1865, payable in 1915	$2,686,000
Madison extension first-mortgage sinking-fund gold bonds, dated April 1st, 1871, payable 1911	$3,150,000
Menomonee extension first-mortgage sinking-fund gold bonds, dated June 1, 1871, payable in 1911	$2,700,000
Amounting, in the aggregate, to the sum of	$18,749,500

Your orators further show to your honor that the said Chicago and Northwestern Railway Company is the owner in whole, or in greater part, of the stock of certain other railroad companies in the States of Illinois, Wisconsin, Iowa, and Minnesota, and in the Territory of Dakota, the several railroads of which company are leased in perpetuity to the said Chicago and Northwestern Railway Company, and are operated and controlled by it by virtue of the interest therein, as hereinafter specified, to wit:

The Chicago and Milwaukee Railroad, from Chicago, in the
9 State of Illinois, to Milwaukee, in the State of Wisconsin. The LaCrosse, Trempeleau and Prescott Railroad, in Wisconsin, from its junction with the Chicago and Northwestern Railway, near LaCrosse, to the bridge across the Mississippi River, near Winona. The Winona & S't Peter Railroad from Winona, in the State of Minnesota, to the Big Sioux River, including the Winona and S't Peter Railroad, in the Territory of Dakota, and the bridge across the Mississippi River at Winona, with the branch to Mankato, known as the Winona, Mankato and New Ulm Railroad. The Iowa Midland Railway from a point on the Chicago, Iowa and Nebraska Railroad, near Clinton, to Anamosa, in the State of Iowa; and the Northwestern Union Railroad from Milwaukee to Fond du Lac, in the State of Wisconsin, with a branch to the iron mines in Dodge County in Wisconsin. The S't Charles Railroad from the town of S't Charles to the town of Batavia, in the State of Illinois, and the branch from Stanwood to Tipton, in the State of Iowa, known as the Stanwood and Tipton Railroad; and, that the said several railroad companies, whose stock is owned by the said Chicago and Northwestern Railway Company, as aforesaid, have severally issued bonds, secured by trust deeds, or mortgages upon their respective lines of railroad severally with their equipments, and appurtenances, and upon the franchises of said companies respectively; which said bonds now outstanding amount in the aggregate to the sum $16,599,500, the payment of which has been assumed by the said Chicago and Northwestern Railway Company, as follows:

First mortgage-bonds of the Chicago and Milwaukee Railroad Company, dated May 1, 1854, payable 1874, $397,000.

Second mortgage-bonds of the Milwaukee and Chicago Railroad Company, dated February 1, 1854, payable 1874, $182,000.

Third mortgage-bonds of the Milwaukee and Chicago Railroad Company, dated August 1, 1863, payable 1898, $1,135,000.

LaCrosse, Trempeleau & Prescott Railroad Company's first-mortgage bonds, dated April 1st, 1868, payable 1878, $1,000,000.

Winona and S't Peter Railroad Company's first-mortgage bonds, dated January 1st, 1867, payable 1887, $2,750,000.

Winona and S't Peter Railroad Company's second mortgage-bonds dated November 1st, 1867, payable 1907, $1,650,000.

10 Winona and S't Peter Railroad extension first-mortgage sinking-fund gold bonds, dated December 1st, 1871, payable 1916, $4,375,000.

Winona and S't Peter Railroad Company, of Dakota, same class, for completion of road in Dakota, $250,000.

Iowa Midland Railway Company's first-mortgage bonds, dated October 1st, 1870, payable 1900, $1,350,000.

Northwestern Union Railway Company's first-mortgage sinking-fund gold-bonds, dated June 1, 1872, payable 1917, $3,500,000.

The payment of all which bonds has been assumed by the said Chicago and Northwestern Railway Company, and for which it is now liable.

Your orators further show to your honor that, as they are informed and believe, the total cost of all the railroads of the Chicago and Northwestern Railway Company to March 31, 1874, was the sum of $65,090,805.12.

The total earnings of the said railways for the year ending December 31, 1873, were the sum of $13,816,464.59.

Your orators further show that the total earnings of said railway company in the State of Wisconsin, for the year ending December 31, 1873,

were the sum of $3,190,523.64. The total cost of the railway of said company in the State of Wisconsin, was the sum of $28,074,317.35.

The total operating expenses of the said railway company, in the State of Wisconsin for the year ending December 31st, 1873, were the sum of $2,099,850.66.

Your orators further show that more than seventy per cent. of the earnings of said company, in the State of Wisconsin, were necessarily required to pay the operating expenses of said railways in the said State, and that the debt of said company applicable to the railroads in Wisconsin was the sum of $17,247,770.00.

Your orators show to your honor that, the said Chicago and Northwestern Railway Company, on the 30th day of November, A. D. 1872, for the purpose of consolidating the various outstanding debts for which said company was liable, as stated in the trust deed hereinafter named, and for the purpose of fully equipping and completing its various lines of railroad described in the said trust deed, determined to issue
11 bonds, amounting in the aggregate to $48,000,000, and to secure the same by a deed of trust upon the entire line of railroad, property, and franchises owned by said company, and upon the railroads, property, and franchises of the several railroad companies whose capital stock was t'en owned in whole, or greater part, by the said Chicago and Northwestern Railway Company, in the manner stated in the said last-mentioned deed, and in pursuance of authority conferred upon said railroad company by virtue of the laws of the State of Wisconsin and the State of Illinois, the said Chicago and Northwestern Railway Company did issue for the purposes aforesaid, of said series of bonds the sum of $8,955,000, which bonds were payable on the first day of December, A. D. 1902, in gold coin of the United States, with interest at seven per cent. per annum, payable semi-annually on the first days of June and December, a portion of which bonds were coupon bonds, of which a copy is herewith filed, marked Exhibit O, and made a part of this bill, and a portion were interest-bonds, a copy of which is herewith filed, marked Exhibit P, and made a part of this bill; and to secure the payment of said bonds, the said Chicago and Northwestern Railway Company executed and delivered to the Union Trust Company, of New York, a trust deed upon the following lines of railway owned and operated by the said Chicago and Northwestern Railway Company, to wit:

From Chicago, in the State of Illinois, to Negaunee, in the State of Michigan.

From Chicago to the east bank of the Mississippi River, opposite Clinton.

From Turner Junction to Freeport, in the State of Illinois.

From Kenosha, in the State of Wisconsin, to Rockford, in the State of Illinois.

From Belvidere, in the State of Illinois, to the La Crosse, Trempeleau & Prescott Railroad Junction, in the State ot Wisconsin.

From Elgin, in the State of Illinois, to Geneva Lake, in the State of Wisconsin, including the Elgin and State-Line and State-Line and Union Railroads.

And all the right, title, and interest of the said Chicago and Northwestern Railway Company in and to the Chicago, Iowa and Nebraska, and the Cedar Rapids and Missouri River Railroads, extending from the east bank of the Mississippi River, opposite Clinton, to Council
12 Bluffs, in the State of Iowa, including the bridge across the Mississippi River at Clinton, with the branch railroad from Clinton to Lyons, in the State of Iowa, and which are leased in perpetuity to

the said Chicago and Northwestern Railway Company, with all the appurtenances of said railroads, as the same are described in said trust-deed, a copy of which is herewith filed, and marked Exhibit Q, and made a part of this bill.

Of the sum of $48,000,000 the amount of $35,349,000 was reserved to pay the bonds mentioned in said deed, being all the bonded debt of said railway company, or for which said company is liable.

Your orators further show to your honor that said consolidated company was the owners of the railways extending from Chicago, in the State of Illinois, to Negaunee, in the State of Michigan; from Chicago to the east bank of the Mississippi River; from Turner's Junction to Freeport, in the State of Illinois; from Kenosha, in the State of Wisconsin, to Rockford, in the State of Illinois; from Belvidere, in the State of Illinois, to a junction with the La Crosse, Trempeleau and Prescott Railroad, near La Crosse, in the State of Wisconsin; from Elgin, in the State of Illinois, to Geneva Lake, in the State of Wisconsin, including the Elgin and State-Line and State-Line and Union Railroads.

Your orators further show to your honor that the said Chicago and Northwestern Railway Company has been able to pay, and has paid, the interest upon its outstanding obligations, as the same have become due and payable, from the moneys and revenues received from the operation of its lines of road, and that the roads aforesaid, whether they are the roads of the said Chicago and Northwestern Railway Company, or roads controlled and operated as one consolidated line of road, extending through, or partly through, the States of Michigan, Wisconsin, Illinois, Iowa, Minnesota, and the Territory of Dakota; and that said lines of road can be much more profitably operated in such connection than if the same were operated as separate roads.

Your orators further show to your honor that, as they are advised and believe, the managers of the said Chicago and Northwestern Rail-
13 way Company have been, from time to time, reducing their rates of fare and freight upon the said railroad, and the reductions have been made according to the following table, shown in the annual report of the company for 1873:

		Earnings per pass'ng'r per mile.	Earnings per ton of freight per mile.
For year ending May 31,	1867	$ .03 93/100	$ .03 48/100
" " " " "	1868	.04 12/100	.03 13/100
" " " " "	1869	*	*
" " " " "	1870	.03 29/100	.03 09/100
" " " " "	1871	.03 31/100	.02 87/100
" " " " "	1872	.03 28/100	.02 61/100
" " " " "	1873	.03 16/100	.02 35/100

*Records for 1869 were destroyed and cannot be replaced.

Which are twenty per cent. reduction in passenger rates, and thirty-two per cent. in freight since 1867.

Your orators further show to your honor, that the aforesaid reductions have been made in the rates of fare and freight of said railway, as your orators are informed and believe, for the purpose of aiding in developing the resources of the country in which the said road is located, with the view of increasing the business of the said road, and the con-

sequent increase of its revenues, although it was not possible for said company, at such rates, to pay any dividends whatever to its stockholders since the month of December, 1872, on its common stock, and but three and one-half per cent. upon its preferred stock since that date.

Your orators further show to your honor that the existing rates of fare and freight established by said railway company are reasonable and just, and are, in fact, so low that, in operating its said railways under the rates of fare and freight established by the said Chicago and Northwestern Railway Company, it has not derived and does not derive from all its sources a revenue or sum sufficient to pay the necessary cost of operating said railways and maintaining the equipment and appurtenances in a proper state of efficiency and repair, and to pay the interest on the bonds for which said company is liable and to pay the legal rate of interest in the State of Wisconsin upon the money actually
14 invested by its stockholders in the construction and equipment of said road.

Your orators further show to your honor that an act was passed by the legislature of the State of Wisconsin, approved March 11, 1874, entitled "An act relating to railroad, express, and telegraph companies in the State of Wisconsin;" which is as follows:

["Published April 28, 1874.]

"CHAPTER 273.

"An act relating to railroads, express, and telegraph companies in the State of Wisconsin.

"SECTION I. All railroads in the State of Wisconsin are hereby divided into three classes, to be known as Class A, Class B, and Class C. Class A shall include all railroads or parts of railroads in the State of Wisconsin now owned, operated, managed, or leased either by the Milwaukee and St. Paul Railway Company, the Chicago and Northwestern Railway Company, or the Western Union Railway Company. Class B shall include all railroads or parts of railroads owned, operated, managed, or leased by the Wisconsin Central Railway Company, the Green Bay and Minnesota Railway Company, or the West Wisconsin Railway Company. Class C shall include all other railroads or parts of railroads in said State.

"SECTION II. Any individual, company, or corporation, owning, operating, managing, or leasing any railroad or part of railroad in the several classifications as herein presented, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage, not exceeding one hundred pounds in weight, as follows: Class A, three cents; Class B, three and one-half cents; Class C, four cents; *Provided*, That no such individual, company, or corporation shall charge, demand, or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half the rate above prescribed: *And provided further*, That the rates for transportation herein prescribed may be reduced as hereinafter provided.
15 "SECTION III. All freights hereafter transported upon any railroad or part of railroad in this State are hereby divided into four general classes, to be designated as first, second, third, and fourth classes, and into seven special classes to be designated as Class D, E, F, G, H, I, and J. Class D shall comprise all grain in car-loads. Class E shall comprise flour in lots of 50 barrels or more, and lime in lots of 24 bar-

rels or more. Class F shall comprise salt in lots of 60 barrels or more, and cement, water-lime, and stucco in lots of 24 barrels or more. Class G shall comprise lumber, lath, and shingles, in car-loads. Class H shall comprise live-stock in car-loads. Class I shall comprise agricultural implements, furniture, and wagons. Class J shall comprise coal, brick, sand, stone, and heavy fourth-class articles in car-loads. And in addition to the several articles in the said special classes shall be added other articles as, and in the manner hereinafter prescribed, except into Classes D, E, G, and H; and all articles not above enumerated, *are* [or] subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter provided to be appointed as said articles are classified by the Milwaukee and St. Paul Railway, which classification went into effect on the 15th day of June, 1872.

"SECTION IV. No individual, company, or corporation, owning, managing, or leasing any railroad or part of a railroad designated in section one as Class A or B shall charge for or receive a greater or higher rate for carrying articles named in the several special classes herein designated than is hereinafter provided, namely: Class D, not exceeding six cents per 100 lbs. for the first twenty-five miles, and not exceeding four cents per hundred pounds for the second twenty-five miles, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof, unless the fraction shall be less than thirteen miles, in which case the rate shall be one cent for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one-half cent per hundred pounds shall
16 be received for such twenty-five miles over said first-mentioned distance. Class E, not exceeding twelve cents per barrel for the first twenty-five miles, and not exceeding eight cents per barrel for the second twenty-five miles, and not exceeding four cents for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two cents per barrel for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one cent per barrel shall be charged for such additional twenty-five miles over said two hundred miles. Class F, not exceeding fifteen cents per barrel for the first twenty-five miles and not exceeding six cents per barrel for the second twenty-five miles, and not exceeding three and one half cents per barrel for each addition' twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one and one-half cents per barrel for said fractional part. Class G, not exceeding eight dollars per car-load for the first twenty-five miles and not exceeding five dollars per car-load for the second twenty-five miles and not exceeding two dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one and one-half dollars per car-load for such fractional part. Class H, not exceeding ten dollars per car-load for the first twenty-five miles, and not exceeding seven dollars per car-load for the second twenty-five miles, and four dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two dollars per car-load for such fractional part. Class I, not exceeding eleven dollars per car-load for the first twenty-five miles, and not exceeding six dollars per car-load for the second twenty-five miles and not exceeding three dollars per car-load for each additional twenty-five miles or fractional part

17 thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar and fifty cents per car-load for such fractional part. Class J, not exceeding eight dollars per car-load for the first twenty-five miles, and not exceeding six dollars per car-load for the second twenty-five miles, and not exceeding two and one-half dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar per car-load for such fractional part.

"SECTION V. No individual, company, or corporation, owning, operating, managing or leasing any railroad mentioned in Classes A and B, in the first section of this act, shall receive a greater or higher rate for carrying any freight under the four general classes named in the third section of this act, than was charged for carrying freights in said four general classes on said railroad on the first day of June, 1873; and no individual, company or corporation, owning, operating, managing, or leasing any railroad mentioned in Class C, in the first section of this act, shall receive a greater or higher rate for carrying freight than was received by said individual, company or corporation, for carrying such freight on the first day of June, 1873. In computing the rates for carrying any freight, according to the provisions of this act, the distance for carrying such freight shall be *be* computed from where it is received, notwithstanding it may pass from one railroad to another.

"SECTION VI. In no instance shall any such individual, company, or corporation, lessee, or other person, charge or receive any greater rate or compensation for carrying freight or passengers than hereinbefore provided; and any individual, company, or corporation, violating or in any way evading the provisions of this act, shall forfeit all right to recover or receive any compensation whatever for the services rendered, wherein such violation is attempted; and every agent of any such corporation, lessee, or other individual operating any railroad within this State, who shall refuse to receive for transportation over the road for which he is agent, in the usual way, any of the articles
18 hereinbefore mentioned, on account of the compensation hereinbefore prescribed being too low, or, receiving any such articles of freight, shall charge or attempt to charge for the transportation of the same any greater sum than herein fixed, or shall in any manner violate or attempt to violate or evade the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine not exceeding two hundred dollars for each and every offence, and the injured party shall have a right of action against said agent, or against the railroad company or other person operating the railroad, or both, in which he shall be entitled to recover three times the amount taken or received from him in excess of the rates prescribed by this act.

"SECTION VII. Justices of the peace shall have concurrent jurisdiction with the circuit court in all prosecutions for violation of this act, with full power and authority to impose fines, and to the same extent as the circuit court; and the defendant shall have the right of appeal as in other cases tried before justices of the peace; and justices of the peace shall also have jurisdiction in all civil cases under this act, whenever the amount claimed does not exceed two hundred dollars.

"SECTION VIII. The governor shall, on or before the first day of May, 1874, by and with the consent of the senate, appoint three railroad commissioners, one for a term of one year, one for a term of two years, and one for a term of three years, whose terms of office shall commence on the first day of May, and shall, each year thereafter, on the first day of

May, appoint one railroad commissioner for the term of three years, said railroad commissioners to be confirmed by the senate next convening after said appointment; but no person owning any bonds, stock, or property in any railroad, or in the employ of any railroad company, or in any way or manner interested in railroads, shall be so appointed.

"SECTION IX. Said railroad commissioners shall have power to administer oaths or affirmations, to send for persons or papers under such regulations as they may prescribe, and shall, at any and all times, have access to any and all books and papers in any railroad office kept for and used in any railroad office by any railroad company in this State.

"SECTION X. Said railroad commissioners, in making any examination as contemplated, for the purposes of obtaining information pursuant to this act, shall have power to issue subpœnas for the attendance of witnesses by such rules as they may prescribe. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the circuit court of any county, upon application of the said commissioners, to issue an attachment for such witness and compel such witness to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners, and said court shall have power to punish for contempt, as in other cases of refusal to obey the process and order of such court.

"SECTION XI. Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said commissioners to appear and testify as therein required shall be deemed guilty of a misdemeanor and shall be liable to arraignment and *tried* [trial] in any court of competent jurisdiction, and on conviction thereof, shall be punished for such offence by fine not less than fifty dollars nor more than five hundred dollars, or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had.

"SECTION XII. Said railroad commissioners shall, during the month of January in each year, ascertain and make return to the state treasurer as hereinafter provided: 1st. The actual cost of each railroad in this State up to and including the 31st day of the next preceding December; and if such railroad shall be partly in and partly out of this State, then the actual cost of so much thereof as is in this State. 2d. The total gross receipts resulting from the operation of every such railroad during the next preceding year ending on the 31st day of December, or of that part of the same which is in this State. 3d. The total net earnings resulting from the operation of any such railroad during the next preceding year ending on the 31st day of December, or of that part of the same which is in this State. 4th. The total interest-bearing indebtedness of the company owning or operating such railroad and the amount of interest paid by such company during the next preceding year ending on the 31st day of December, and if any part of such indebtedness has been incurred in consequence of the construction, maintenance, repair, removal, or operation of any part of such railroad which is not in this State, or for equipment of such part, such railroad commissioners shall ascertain and determine in such manner as they shall think just and equitable how much of its indebtedness is justly charg'able to that part of said railroad that is in this State, and how much interest shall have been paid by such company during such year ending on the 31st day of the next preceding December, or that part of such indebtedness which is justly charg'able to that part of said railroad that is in this State. The board of commissioners shall prescribe the form and manner in which all reports required from railroad

companies under the provisions of this act shall be made, and suitable blanks for that purpose, as by said commissioners directed, shall be provided [for] by the secretary of state. The records of said board shall at all times be open to inspection by the governor, secretary of state, attorney-general, and legislature.

"SECTION XIII. Said railroad commissioners shall have power to classify all articles of freight transported on any railroad or parts of railroads, except the articles herein placed in special classes D, E, G, and H, placing said articles in either of the general classes herein provided for, or in any of the special classes except Classes D, E, G, and H, and are further empowered and authorized to reduce said rates on any of said railroads or parts of railroads, either in general or special classes, when, in their judgment, or a majority of them, it can be done without injury to such railroad.

"SECTION XIV. Any individual, company, or corporation, owning, operating, managing, or leasing any of said railroads or parts of railroads shall be bound by the decision of such railroad commissioners, or a majority of them, with reference to said rates, and every violation by said individual, company, or corporation charging a greater or higher
21 rate shall be deemed guilty of a misdemeanor, and on conviction thereof, shall pay a fine of not exceeding two hundred dollars for each and every offence, and the injured party shall have a right of action against said individual, railroad company, or corporation operating said railroad, in which he shall be entitled to recover three times the amount taken or received from him in excess of the rates prescribed by this act, to be recovered as provided in section seven of this act.

"SECTION XV. Before entering upon the duties of his office, each of said commissioners shall make and subscribe, and file with the secretary of state an affidavit in the following form: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the constitution of the State of Wisconsin, and that I will faithfully discharge the duties of railway commissioner to the best of my ability; that I am not a stockholder, officer, or employee of any railroad or freight company, or in any way interested therein," and shall enter into bonds with security to be approved by the governor in the sum of twenty thousand dollars, conditioned for the faithful performance of his duties as such commissioner.

"SECTION XVI. Each of said commissioners shall receive for his services not exceeding twenty-five hundred dollars per annum, payable quarterly; and three dollars per day for traveling expenses for each and every day actually traveled in performance of the duties herein required. He shall be furnished with an office, furniture, and stationary, and necessary books and maps, at the expense of the State. The office of said commissioner shall be kept at Madison, and all sums of money authorized to be paid by this act out of the State treasury only on the order of the governor: *Provided*, That the total sum of money to be expended by said commissioners for office rent, furniture, and stationary shall in no case exceed the total sum of eight hundred dollars per annum.

"SECTION XVII. The commissioners shall have the right of passing, in the performance of their duties concerning railroads, on all railways and railway trains in this State free of charge.

"SECTION XVIII. Nothing contained in this act shall be taken
22 as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from beyond the boundaries of this State, and to be carried across or through the State, but said railroad companies shall possess

the same power and right to charge such rates for carrying such freight as they possessed before the passage of this act.

"SECTION XIX. This act shall take effect and be in force from and after its passage and publication.

"Approved March 11, 1874."

Your orators further show to your honor that said Chicago and Northwestern Railroad Company operates its roads under rules established by said company, which fix the rates to be charged for the transportation of passengers and freight upon all the roads of said company and the roads operated by it; that said rates of fare and freight have been established by said company after a careful examination of all the facts and circumstances bearing upon the question which it was in the power of the officers of said corporation to procure, as your orators are advised and verily believe, and said rates are reasonable and just, and your orators further state, upon their best information and belief, that said company will not derive from all its sources of revenue a sufficient sum of money to pay the operating expenses of said railway, and to pay the interest upon its bonds as aforesaid, and maintain the said railroad and its equipment in a proper state of efficiency without paying any dividends whatever to its stockholders or making provisions for a sinking-fund to retire the bonds which are becoming due at the several times therein specified, if its said roads are conducted and operated under and in accordance with the provisions of said act of March 11, 1874; that if said roads are required to be operated for the rates of fare and freight specified in said act, instead of returning any compensation whatever to the owners of said roads, the same will be run at a loss, and consequently the value of said roads will be entirely destroyed, and the value of the stock held and owned by your orators, as aforesaid, will be entirely destroyed; that a part of the stock of your orator, Wait
23 Talcott, was stock received in exchange for stock of the Galena and Chicago Union Railroad Company when the consolidation of the stock of said company was made with the stock of the Chicago and Northwestern Railway Company, as hereinbefore stated, and that said stock was issued under and in pursuance of the then existing laws of the State of Wisconsin and of the State of Illinois; that when your orators became the owner of the stock aforesaid they had a right to presume, and did presume, that the property of said corporation would be employed by said corporation for reasonable rates of compensation in transacting their business.

Your orators further show to your honor that the result of the enforcement of the act last aforesaid will be either the failure of the said company to pay its bonded debts heretofore set forth and the interest thereupon as the same accrues, or the suspension by said company of the operation of said railroads in the State of Wisconsin, and the consequent destruction of the stock held by your orators as aforesaid, as they are informed and verily believe.

Your orators further show to your honor that the classes of freight established by section three of said act is different from the classes of freight established by the law of the State of Illinois for the transportation of freight upon the same road, and different from the classes of freight established by the State of Iowa for the transportation of freight upon the road of said company, and different from the classes of freight established by the laws of the State of Minnesota for the transportation of freight upon the railroads of said company, and that it is practically impossible to carry on the business of the transportation of freight from the State of Wisconsin into either one of the States above

named, in accordance with the laws of the State of Wisconsin and such other States, and that, in relation to freight transportation from the said State of Wisconsin to either of the States of Illinois, Iowa, and Minnesota, it is impossible that the same shall be transported in pursuance of the provisions of the acts of the said several States.

24 Your orators charge that as they are advised by counsel and believe, the enforcement of the act above named, or compliance with the same by the said railroad company, would impair the obligations of the contract entered into between the said railway company and your orators, and for that reason the act aforesaid is in contravention of the Constitution of the United States, for that the said act would compel the said railway company to employ the property of the said company in such manner as to entirely destroy the value of the stock of said company.

Your orators further charge that the act aforesaid is in violation of the thirteenth article of the bill of rights of the constitution of the State of Wisconsin, which is as follows: "The property of no person shall be taken for public use without just compensation therefor."

And your orators further charge that the legislature of Wisconsin had no constitutional power or authority to pass the act above recited, and that said act is without any binding force upon the said company.

Your orators further charge that the enforcement of the act above recited would impair the obligation of the contract entered into between the stockholders of the said Galena and Chicago Union Railroad Company and the stockholders of the said Chicago and Northwestern Railway Company, contained in the consolidation of said companies above set forth, and is in violation of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

Your orators further show that when the several railroads consolidated in the one above set forth in this bill were thus consolidated the holders of the stock in said several roads surrendered said stock and received in exchange therefor what was termed consolidated stock, or stock representing the property and franchises of all the roads then consolidated.

Your orators show that the holders of said consolidated stock have, since said consolidation, annually elected a president and directors who have had, in behalf of said consolidated company, the exclusive

25 possession, control, and direction of said road and the business thereof, and that said consolidated company and the president and directors thereof, thus controlled the said several roads above set forth as one entire road, which road, with its appurtenances, property, and franchises, is represented solely by the consolidated stock created under and by virtue of the laws of the said States of Illinois, Wisconsin, and Michigan.

Your orators further show that the 18th section of the act of the legislature of Wisconsin, approved March 11, 1874, reads as follows: "Nothing contained in this act shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State, for carrying freight which comes from beyond the boundaries of the State, and to be carried across or through the State; but said railroad companies shall possess the same power and right to charge such rates for carrying such freight as they possessed before the passage of this act."

Your orators further charge that they are advised that the proper con-

struction of said section, taken in connection with the other sections of said act, would be that the rates of freight prescribed by said act are to be applied to all merchandise which is shipped at any point within said State to any point either within or without said State; and your orators charge that this is a regulation of inter-State commerce, which, they are advised, the legislature of Wisconsin has no power to enact.

Your orators further charge that the said Chicago and Northwestern Railway Company has never accepted the terms of the act of March 11, 1874, aforesaid, but that it will be obliged to accept the rates of fare, and freight upon its said road in the State of Wisconsin, unless said act shall be held to be without constitutional validity, as your orators are advised and believe, and in either event the value of the stock, held by your orators severally, would be wholly destroyed.

Your orators further charge that George H. Paul, Joseph Osborn, and John W. Hoyt have been appointed railroad commissioners of the State of Wisconsin, under and in pursuance of the terms of said act, and have accepted said appointment and entered upon the discharge of their duties as said commissioners; and your orators greatly fear that
26 the said railroad commissioners, claiming to act by virtue of the powers conferred upon them by said act, will proceed to classify in some on' or other of the classes of freight named in said act, the articles of freight which are not specifically classified by the terms of said act, and that said railroad commissioners will also proceed to produce the rates of fare and freight upon the railroad of said company, unless restrained from so doing by the order of this honorable court.

Your orators further charge that other persons, whose names are to your orators at present unknown, but whom your orators ask leave to make parties defendant to this bill, when discovered, with apt words to charge them, are preparing and intending to bring suit against the said railway company, for the purpose of enforcing the provisions of said act of March 11, 1874; and said railway company will be harrassed with a great multiplicity of suits, and its business seriously injured and impaired, and the stock which your orators severally hold will be greatly impaired and depreciated, or the value thereof wholly destroyed, unless the parties herein named shall be restrained from proceeding to enforce the provisions of said act in the manner aforesaid.

Your orators further show to your honor that in consequence of the passage of said act of March 11, 1874, and the proposed enforcement of the same by the said railroad commissioners and the attorney-general of the State of Wisconsin, and the arrest of the agents of the said railway company, under the provisions of said act, the value of the securities held by your orators, Willem Frederik Piek, Henry R. Pierson, and Moses Taylor, and represented by your orators, The Farmers' Loan and Trust Company, and the Union Trust Company, of New York, severally, as trustees, has very greatly depreciated; and your orators have applied to said railway company, and requested it to cause such legal proceedings to be instituted in its name as would effectually protect the rights of the holders of the bonds of said railway company against all attempts to enforce the act of March 11, 1874, either through
27 the railroad commissioners appointed under said act, or by prosecution of the officers of said company, because the enforcement of the act would destroy the value of the stock of said railway company; and your orators requested said company to consider the fact that the passage of the act had already greatly depreciated the value of said stock, and that the proposed enforcement thereof, in the ways contemplated by its provisions, must inflict irremediable injury upon the property and stock

of said company; but said company, acting through its board of directors, had declined to take the steps necessary to protect the rights of your orators in the premises, either by the institution of the necessary legal proceedings, or in any other matter.

Your orators therefore charge the said defendants, George H. Paul, Joseph H. Osborn, and John W. Hoyt, the railway commissioners aforesaid, and the said defendant A. Scott Sloan, are preparing to institute or cause to be instituted a multiplicity of suits against the said railway company and its agents for the purpose of enforcing the provisions of said act of March 11th, 1874, and unless said railway commissioners and the said attorney-general are restrained by the order of this honorable court, they will cause a great number of said suits to be instituted against the local agents of said company, which suits would greatly embarrass said company, subject it to heavy expenses, and compel it wholly or in part to suspend its business, and thereby impair its means of discharging the interest due to your orators and other bondholders upon its said bonds.

Your orators further charge that said railroad commissioners and attorney-general are preparing to have the agents of said railroad company in Wisconsin arrested and imprisoned, under the provisions of said act, and that they will do so unless restrained by order of this honorable court; and that if the agents of said company are so arrested, the said company will be compelled either to operate its said railroads, under said act, in such manner as to fail to raise sufficient revenue to pay the necessary operating expenses thereof, and to pay for keeping saidroads and their equipments in a proper state of repair and to pay the interest on its bonds, and to provide a proper and reasonable sinking-fund to pay the principal of said bonds, or to cease from operating said railroad altogether, and, in either case, the value of the stock owned and held or represented by your orators, as aforesaid, would be greatly depreciated or wholly destroyed.

28

In consideration of the premises, and inasmuch as your orators are without remedy in the premises save by the aid of a court of equity, where matters of this sort are properly cognizable and relievable, your orators pray that the said Chicago and Northwestern Railway Company, the said George H. Paul, J. H. Osborn, and John W. Hoyt, and said A. Scott Sloan, may be made parties defendant to this bill, and duly summoned to answer the same, and that the said railway company may be enjoined by the order of this honorable court from doing any act which shall amount to an acceptance of the terms of the provisions of the said law as an amendment to the charter of said company, or from operating its railroad in the State of Wisconsin for such rates of fare and freight as will be insufficient to yield a revenue adequate in amount to pay the necessary expenses of operating and maintaining said road and its equipment, and to pay the interest upon its bonds which are held and owned by your orators, Willem Frederik Piek, Henry R. Pierson, and Moses Taylor, as aforesaid, or are represented by your orators, The Farmers' Loan and Trust Company, and the Union Trust Company, of New York, severally, as trustees in the manner hereinbefore stated, under the pretense that said act of March 11th, 1874, is a valid act, which said company is required to obey, in so far as said act attempts to fix the rate of compensation which may be required by said company for the transportation of passengers and freight, and that the said George H. Paul, J. H. Osborn, and John W. Hoyt, may be enjoined from fixing any rates for the transportation of persons or property over the road of said company, under and in pursuance of the pro-

visions of said act of March, 11th, 1874, or from classifying un-
29 der the provisions of said act any articles of freight which are not now classified, and that said railway commissioners and said Sloan, and each of them, be enjoined from arresting or causing or aiding or abetting the arrest of any of the agents of said railway company under the provisions of said act, or from instituting or causing to be instituted against said railway company or its agents or officers any suit or suits or other proceedings for the purpose of enforcing the provisions of said act of March 11th, 1874, and that the said defendants be required severally to answer this bill, without oath, their oath to the same being hereby expressly waived, and that upon the final hearing of this bill the said act of March 11th, 1874, may be held and declared to be without constitutional validity, and that the injunction herein prayed may be made perpetual, or for such other or further relief as to your honor shall seem meet and as to equity shall appertain.

C. B. LAWRENCE,
Solicitor for Complainants.
LAWRENCE BROTHERS & CO.
WILLIAM G. WILEY.

STATE OF NEW YORK,
City and County of New York,
Southern District of New York, ss:

De Witt C. Lawrence, being duly sworn, says that he is a member of the firm of Lawrence, Brothers & Company, one of the complainants in the above-entitled suit; that he has read the foregoing bill, and that the statements of said bill, so far as they relate to the interest of affiant's firm as stockholders in the Chicago and Northwestern Railway Company, are true; and that all the other statements of said bill affiant verily believes to be true.

DE WITT C. LAWRENCE.

Subscribed and sworn to before me, this 29th day of May, 1874.
[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

30 STATE OF NEW YORK,
City and County of New York,
Southern District of New York, ss:

William G. Wiley, being duly sworn, says that he has read the foregoing bill, and that the statements of said bill, so far as the same relate to interest of affiant as stockholder in the Chicago and Northwestern Railway Company, are true; and that all the other statements of said bill affiant verily believes to be true.

WILLIAM G. WILEY.

Subscribed and sworn to before me, this 29th day of May, A. D. 1874.
[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

STATE OF ILLINOIS, *Cook County, ss:*

Waite Talcott, being first duly sworn, saith that he has heard the foregoing bill read, and is acquainted with its contents, and that the statements of the said bill are true, according to the best knowledge, information, and belief of this affiant.

Exhibits referred to in the foregoing bill.

EXHIBIT A.

An act to execute the trust created by an act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, by incorporating the Wisconsin and Superior Railroad Company, and granting a portion of said lands thereto.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

31 SECTION 1. Herman Haertel, Alfred Lamberson, Cyrus P. Hiller, Charles Kuehn, Bertine Pinckney, James H. Weed, Anson Ballard, James Duane Doty, George F. Weight, B. Frank Moore, Julius White, William Scott, John Bradley, Albert Winslow, and Joseph Turner, and such other persons, if any, as shall associate with them and become stockholders as hereafter in this act provided, are hereby created, constituted, made, appointed, and declared a body corporate and politic, by the name and style of the Wisconsin and Superior Railroad Company; and said corporation, by and under its aforesaid corporate name and style, shall have perpetual succession, and shall have and enjoy all and singular the rights, powers, authority, privileges, franchises, and immunities as are necessary and proper to the full and complete possession, exercise, and enjoyment of those hereby expressly conferred. Said company may, and it shall have power to, purchase, hold, and own woodland for the purpose of obtaining wood to operate or fence its railroads; but such woodlands shall always be subject to assessment and taxation, and shall never be considered as a part of the property hereinafter exempt from assessment and taxation. Said company may also, and it shall have power, at pleasure to sell, lease, and convey all such estates, real, personal, or mixed, other than the aforementioned woodlands, as may be necessary or proper to have, hold, use, or possess, for, in, or about the construction or equipment, renewal, repair, maintaining, or operating its railroad. Said company may also take, hold, or occupy all such lands as may be given or granted to it by this State or by the Government of the United States, or both, for the purpose of aiding in the construction of any of its railroads. And after such last-mentioned lands are so as above given or granted to said company, it may, subject to the terms, conditions, impositions, restrictions, and limitations, contained in such gift or grant, sell and convey the same, and may otherwise do with said lands as hereinafter provided. All other estates, property, and effects which said company may purchase or acquire, by gift or grant, other than that which is above in this section mentioned, shall always be subject to taxation and assessment, notwithstanding the exemptions hereinafter contained. Said company shall have power to make, have, and use a common seal, and alter, break, and renew
32 the same at pleasure; and by and under its aforesaid corporate name and style said company shall be capable of contracting and being contracted with for and as to the purposes in this act contained, of suing and being sued, of pleading and being impleaded, defending and being defended, answering and being answered unto, in law or in equity, in all courts and places whatsoever, as fully and completely as natural persons, except that it shall never set up the plea of

usury to any contract to which it shall be a party in any court whatever.

SECTION 2. The company, by this act created, is hereby further authorized and empowered to survey, locate, construct, and complete, perpetually to have, use, and enjoy, maintain and operate a railroad with one or more tracks or lines, over the routes following, that is to say: Beginning at the city of Fond du Lac, which is situated on Lake Winnebago, in this State, and running from thence by way of the town or city of Oshkosh, and township number twenty-one, north of range number seventeen east, and east of the southeast corner of section number twenty in said last-named township, northerly to the State line on the St. Louis River or to such point on the State line within the meaning of the act of Congress entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, as the said company shall determine.

SECTION 3. The company hereby created shall have the perpetual right, power, and authority to transport, take, and carry property and persons upon said road by the power and force of steam, of animals, or of any mechanical or other power, or of any combination of them, and to receive and store any property in any of its depots or other buildings, and to make, construct, maintain, and use all such switches, turn-outs, side-tracks, and connecting tracks as it shall think necessary; and also construct, erect, maintain, and use all such depots, station-houses, warehouses, car-houses, and shops, engine-houses and all other buildings, fixtures, and things useful for the accommodation of said company and its roads and those using the same; to purchase or manufacture and own rails, chairs, spikes, engines, cars, tenders, and all other things necessary or useful for the construction or operation of a railroad, and to sell the
33 same. And it shall also have the power and authority to operate its said roads or either of them, in connection with any and all other railroads which may cross, come up to, or connect with the said roads or either of them, upon such terms as shall be mutually agreed upon by and between the said companies: *Provided*, That the said company, in making any such contracts as last aforesaid shall give no preference to one company over any other such company or companies last above mentioned; but all such companies shall be put upon the same equal terms, and whenever and so often as any such business connection contract shall be made or entered into, the same shall be in writing, duly signed and sealed with the seals of the companies parties thereto, in triplicate, and when so executed and sealed one copy thereof shall be filed with the secretary of state, whose duty it shall be to mark thereon the time of its reception, and to carefully preserve and keep the same in his office, open to the inspection of all persons, and the copy so filed with the secretary of state is hereby declared a public record. No such contract shall have any effect in law unless such copy is filed with the secretary of state as aforesaid. Either of the companies being a party to any such contract may be compelled by a mandamus to file with the secretary of state a triplicate copy thereof as aforesaid.

SECTION 5. It shall be lawful for the company hereby created, and it shall have the right, power, and authority by its officers, engineers, agents, servants, and workmen, at any time to enter upon any land for the purpose of exploring, surveying, locating, and determining the route of said railroad; and when the said routes, or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for the last aforesaid company, and it shall have the right,

power, and authority, by its officers, engineers, agents, contractors, surveyors, servants, and workmen, at any time, to enter upon, take, possess, occupy, and use any land along and including the line of said route, not exceeding two hundred feet in width. It shall also be lawful for said company, and it shall have the right, power, and authority at any time to enter upon, take, possess, and occupy, and use any other lands beyond said limits of two hundred feet, which the directors shall, by resolution adopted by them, (a copy of which shall be recorded at the expense of said company, in the office of the register of deeds in the county in which said lands are located,) declare to be necessary for the use of said company for the purposes of erecting depot-buildings, station-houses, machine-shops, freight-houses, warehouses, engine-houses, or buildings or fixtures of any kind, or grounds about the same, for the convenient operation of the road, or for making drains, or giving proper direction to water-courses, or of directing or changing the channels of water-courses, or for the purpose of running such substances or things as may endanger, obstruct, or interfere with the free use of said road, or for the purpose of depositing earth, gravel, or stone, or for the purpose of obtaining earth, gravel, stone, timber, or other material for embankments, structures, or superstructures necessary to the construction, repair, or renewal of said roads. Said company shall, however, at such time, and in such manner as is provided by and in the chapter and act, be liable to pay the full value of all earth, gravel, stone, timber, or land which may be so as aforesaid taken, possessed, and occupied, and used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof or said company shall agree to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered, or deposited, as provided in this act, an estate in and to all and every such lands in fee-simple, absolute, forever, shall be and become vested in said company by virtue thereof, and of the provisions of said act and by the same means, a complete title shall vest in said company in and to all such earth, gravel, stone, and timber; and whenever said company shall deem that the same, or any portion of the aforenamed property, shall no longer be necessary for the purposes for which the same were taken, it is hereby authorized and empowered by deed or other proper instrument in writing, to lease or sell the same, or any part thereof.

SECTION 6. On the completion of said road or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand and receive such sum or sums of money for the transportation of persons and property, and for the storage of property as it shall, from time to time, deem reasonable.

SECTION 8. The company hereby created shall commence the construction of its railroad at the aforesaid city of Fond du Lac, and shall complete the same to township number twenty-one, north of range seventeen east, before it shall construct and operate such railroad from said township northerly. And so soon as the portion of the road herein last referred to shall be completed, the same shall henceforth, from the time of such completion, be operated by the company hereby created; and the said company shall fully equip and complete the entire length of said railroad on or before the 3d day of June, 1866.

SECTION 9. The company hereby created shall be entitled to and invested with the title of the lands and all and singular the rights, privileges, and immunities granted or conferred, or intended to be granted or

conferred, by the act of Congress approved June 3, A. D. 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," to the extent of the whole of the lands granted by the said act of Congress for the purpose of aiding in the construction of a railroad from Fond du Lac, on Lake Winnebago, northerly, to the State line. Said company shall also be subject to all the restrictions, impositions, duties, and obligations contained in the said act of Congress, so far as the same are applicable to the company hereby created, or to the road hereby authorized to be constructed: *Provided*, That the title to the lands in this section mentioned and contemplated shall not vest in said company sooner or faster than the said lands might be sold, as provided and declared in the aforesaid act of Congress; but, as soon and so fast the title to said lands shall vest in said company, and the said lands are hereby granted in consideration of the company so hereby created complying with the terms of the grant hereby made, and of the aforesaid act of Congress.

36 SECTION 13. All the affairs and business of the company hereby created shall be conducted, managed, and carried on by a board of fifteen directors, who shall be stockholders of said company; and the board of directors is hereby invested with power and authority to conduct, manage, and carry on the affairs and business of said company, and also with such power and authority as will carry, or promote the carrying into full and complete effect the meaning and intent of this act. The directors, after the first board, shall be chosen by the stockholders of the company by ballot, as follows, viz: Five directors shall be chosen at the annual meeting of the stockholders, which shall be held on the first Wednesday of December, in the year of our Lord one thousand eight hundred and fifty-seven; and thereafter annually, on the first Wednesday in the month of December of each year, five directors shall be chosen. The annual meeting of the stockholders for the election of directors shall be held at the city of Oshkosh, in this State, unless otherwise established by the board of directors. At all meetings of the stockholders, the votes of the stockholders may be cast in person or by proxy duly authorized; and every stockholder shall be entitled to one vote for each and every share of stock held by him; and in all elections for directors, those stockholders, equal to the number of directors to be elected, having the greater number of votes, shall be deemed and declared duly elected directors. The elections shall be conducted in such manner as shall be prescribed by the by-laws or by resolution of the company. If, for any cause, an election of directors should not be had at the time when, by the provisions of this act, it should be had, the same may be held at such other time as shall be fixed by the by-laws of the company; and, until such elections be had, the directors of the preceding year shall continue to act; and the corporation shall not forfeit or loose any of its privileges, franchises, or immunities, by reason of the irregularity or want of any such election.

SECTION 17. The company hereby created is hereby authorized and fully empowered, in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind; and for any rate of interest which may be

37 agreed upon by and between said company and any party of whom such money may be obtained; and to make, execute, and deliver, in or out of this State, all necessary writings, notes, bills, bonds, mortgages, and all other papers or securities in amount or kind as may be deemed expedient by said corporation, in consideration of any such loan or in discharge of any liabilities they may incur, in

the construction, repair, equipment, or in operating of said road, or in any of the transactions of the said company authorized in this act; and the said company is hereby authorized in its corporate capacity, to make, execute, issue, and deliver its bonds or obligations in such an amount as the directors shall think best for the interests of said company. And the directors of the said company are hereby authorized and empowered to prescribe the sum or sums for which each of said bonds shall be issued, and the time or times, or place or places, when and where the principal and interest of the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest which said bonds shall bear, and the manner and form in which the same and the interest-coupons annexed to them shall be executed; and to secure the payment of any or all of said bonds, the said company is hereby authorized and empowered in its corporate capacity to make, execute, and deliver a mortgage or mortgages, a deed or deeds of trust, upon the whole or any part of its railroad, constructed or authorized to be constructed, and upon the lands in this act granted to said corporation, and upon any other or all of its estate, real, personal, or mixed, in possession or expectancy; and the said company is also hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the trustee or mortgagee full and ample power to enter into and upon, and to take possession of, have, use, and enjoy, or to sell and dispose of the whole or any part of said railroad or estate, real, personal, or mixed, together with the functions appertaining to such railroad, and all corporate or other franchises, rights, and privileges of the said railroad company, or to take up or remove any of the fixtures connected with said railroad. And the directors of said company are authorized and empowered to prescribe all matters
38 relating to the form and terms of any such mortgage or deed of trust, and of its executions and delivery; and they are authorized and empowered to provide for the annual payment to such trustee or receiver as they shall appoint, a certain sum to create a sinking-fund with which to pay off and discharge at or before maturity, any or all of the bonds by them authorized to be issued; and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking-fund, and to authorize him to designate by lot, or in any other suitable manner, the bond or bonds to the payment of which said sinking-fund or any part of it shall be applied; and the said company is hereby fully authorized and empowered, by its agents or brokers, or otherwise, either in or out of this State, to sell, loan, or pledge, hypothecate or otherwise to dispose of any or all of the aforesaid bonds hereby authorized to be issued, at par or at any price greater or less than par, and for such sum and sums as they shall think proper; and the said company, its directors, officers, and agents, are hereby authorized and empowered to have, exercise, and enjoy all the rights, privileges, and powers herein conferred upon them respectively.

SECTION 22. The said company hereby created shall have full power and authority to connect their railroad with any other railroads or branch railroads in the State of Michigan, or to operate the same in connection with such other railroads or branch railroads, or to consolidate the capital stock of the company hereby created with the capital stock of any railroad company created under or by authority of the law of the State of Michigan, upon such terms and under such regulations as may be jointly agreed upon by the directors of said railroad company.

SECTION 34. This act is hereby declared to be a public act, and the

same immediately after the passage thereof shall be printed by the State printer, and, thus published, shall take effect and be in full force.
Approved October 11, 1856.

EXHIBIT B.

An Act to incorporate the Madison & Beloit Railroad Company.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. George H. Slaughter, Thomas W. Sutherland, Thomas J. Whittlesey, Nathaniel W. Dean, Daniel B. Sueden, David L. Mills, Joseph B. Doe, A. Hyatt Smith, Edward V. Whiton, W. H. Bailey, Timothy Jackman, David Noggle, Alfred Field, and John Hackett, together with such other persons as may hereafter become associated with them in the manner hereinafter prescribed, their successors and assigns, are hereby created a body corporate by the name of the Madison and Beloit Railroad Company, and by that name shall, and are hereby, made capable in law to purchase, hold, and enjoy, and retain to them and their successors, lands, tenements, and hereditaments, so far as may be necessary for the purpose of said railroad; and the same to sell, grant, rent, or in any manner dispose of, to contract and be contracted with, to sue and be sued, implead and be impleaded, answer and be answered, defend and be defended, and also to make, have, and use a common seal, the same to alter, break, or renew at their pleasure; and if either of the persons named in this section shall die, refuse, or neglect to execute the powers and discharge the duties hereby created, it shall be the duty of the remaining persons hereinbefore named, or a majority of them, to appoint a suitable person or persons to fill such vacancy or vacancies so often as the same shall occur.

SECTION 2. The said corporation are hereby empowered to cause such examinations or surveys to be made as shall be necessary to ascertain the most advantageous route whereon to construct a railroad, and shall cause an estimate to be made of the probable cost thereof, (for each mile separately;) and said corporation shall be, and they are bereby, invested with the right to construct a railroad with one or more railways or tracks from such convenient point from the village of Beloit, in the county of Rock, to the village of Janesville, and thence to some convenient point of termination in the city of Madison, in the county of Dane.

SECTION 3. The capital stock of said corporation shall be three hundred and fifty thousand dollars and shall be divided into shares of one hundred dollars each, and five dollars on each share shall be paid at the time of subscribing.

SECTION 4. The above-named persons, or a majority of them, are authorized to open books for receiving subscriptions to the capital stock of said company, and shall prescribe the form of such subscription; which books shall be opened within eighteen months after the passage of said act, at such place or places as they may deem expedient, by giving thirty days' notice in some newspaper printed in the counties of Dane or Rock, and in such place or places as may be thought advisable, of the time and place or times and places of opening of said books; the said books to be kept open thirty days.

SECTION 5. So soon as said stock, or thirty thousand dollars thereof, shall have been subscribed the above-named persons, or the same number thereof as shall have given the notice above required, shall give

like notice for the meeting of the stockholders to choose directors at some time, at least thirty days thereafter, at some place within said counties of Dane & Rock; and if at such time and place the holders of one half or more of said stock shall attend, either in person or by lawful proxy, they shall proceed to choose from the stockholders, by ballot, nine directors, each share of capital stock entitling the owner to one vote; and at such election the persons named in the first section of this act, or those appointed by its provisions to fill vacancies which may have occurred, or any three of them, if no more be present, shall be inspectors of such elections, and shall certify, in writing, signed by them, or a majority of them, what persons are elected directors; and if two or more have an equal number of votes, such inspectors shall determine by lot which of them shall be directors to complete the number required, and shall certify the same in like manner; and such inspectors shall appoint the time and place of holding the first meeting of directors, at which meeting five shall form a board competent to transact all business of the company; and hereafter a new election of directors shall be made annually at such times and places as the stockholders at their first meeting shall appoint; and if the stockholders at their first meeting shall fail to appoint the day of such election, then it shall be holden in the
41 succeeding year, on the same day of the same month on which said first election was holden, unless the same shall be on the first day of the week, in which it shall be holden on the day next succeeding; and if no election be made on the day appointed said company shall not be dissolved, but such election may be made at any time appointed by the by-laws of said company. The said directors shall elect one of their number president, and appoint a secretary, treasurer, and such engineers and other officers as they may find necessary; shall fix their compensation, and may require adequate security for the performance of their respective trusts.

SECTION 6. The directors may receive payment of the subscriptions to the capital stock at such time in such proportion, not exceeding twenty-five per cent. at any one installment, under such conditions as they may deem fit, under the penalty of forfeiture of all previous payments thereon or otherwise: *Provided*, That they shall never require the payment to be made at any place out of the counties through which said road shall pass; and such directors shall, at least thirty days previous to the appointed time of such required payment, give notice thereof in the manner provided in the fourth section of this act for giving notice of the opening of the books of subscription for the stock of said company.

SECTION 7. The directors of said company shall have power to make, from time to time, all needful rules, regulations, and by-laws, touching the business of said company, and to determine the number of tracks and railways upon said road, and the width thereof, and the description of carriages which may be used thereon; to regulate the amount of tolls, and the manner of collecting the same for such transportation, and to fix penalties for the breach of any rules, regulations, or by-laws, and to direct the mode or condition of transferring the stock of said company; and penalties provided for by the said by-laws may be sued for by any person authorized thereby, in the name of said company, and recov'ed in an action of debt before any court having jurisdiction; and the said company may erect and maintain toll-houses and such other buildings and fixtures as the accommodation of those using said road may require.

SECTION 8. The said company shall have the right to enter upon

any lands, to survey and lay down said road, not exceeding
42 one hundred feet in width; and whenever any lands or materials shall be required for the construction of said road, and the same shall not be given or granted to said company as to the compensation to be paid therefor, the person or persons claiming compensation as aforesaid, or if the owners thereof are minors, insane persons, or married women, the guardian or guardians of such minor or minors, and insane persons, and the husband of such married woman, may select for themselves an arbitrator, and the company shall select an arbitrator, and the two thus selected shall take to themselves a third, who shall be sworn and paid by said company as arbitrators between the parties, and render copies of their award to each of the parties, in writing, from which award either party may appeal to the court of proper jurisdiction for the county in which said lands or materials may have been situated; and in all cases in which compensation shall in any manner be claimed for lands where there has been no improvement made, it shall be the duty of the arbitrators and the court to award a fair compensation for said lands and materials; and appeals in such cases shall, when taken, be in all respects proceeded in as appeals in other cases to said court, and brought into said court by filing the award with the clerk of said court, whose duty it shall be to enter the same in the docket of said court, setting down the claimant or claimants as plaintiff and the said company as defendant; and when the valuation so ascertained shall be paid or tendered by said company, said company shall have the same right to retain, own, hold, and possess said lands and materials as fully and absolutely as if the same had been granted and conveyed to said company by deed, as long as the same shall be used for the purpose of said road.

SECTION 9. The said company may construct the said railroad across any public or private road, highway, stream of water, or water-course, if the same shall be necessary; but the said company shall restore such road, highway, stream of water, or water-course to its former state, or in a sufficient manner not to impair the usefulness of said road, highway, water, or water-course, to the owner or to the public.

43 SECTION 10. All persons paying the toll aforesaid may, with suitable and proper carriages, use and travel upon said road, always subject, however, to such rules and regulations as said company are authorized to make by the seventh section of this act.

SECTION 11. So soon as the amount of toll accruing and received from the use of said road, or part thereof, according to the provisions of this act, shall exceed six per cent. on the amount of said capital stock paid in, after deducting therefrom the expenses and liabilities of said company, the directors of said company shall make a dividend of such net profits among the stockholders, in proportion to their respective shares; and no accumulative fund exceeding one per cent. of the profits of said company shall remain 'divided for more than six months.

SECTION 12. If any person or persons shall willfully abstract, or in any way spoil, injure, or destroy said road, or anything belonging or incident thereto, or any materials to be used in the construction thereof, or any building, fixture, or carriage erected or constructed for the use or convenience thereof, such person or persons shall each be liable for every such offence to treble the damages sustained thereby, to be recovered in an action of debt in any court having jurisdiction of the amount.

SECTION 13. Whenever it shall become necessary in the location or

construction of said road to pass through the land of any individual, it shall be the duty of the company to provide for said individual proper wagon-ways; it shall be liable to such individual in treble the amount of damages occasioned by such neglect.

N. E. WHITESIDE,
Speaker of the Assembly.
J. E. HOLMES,
Lieut-Governor and President of the Senate.

Approved August 19, 1848.

EXHIBIT C.

44 An act to amend an act entitled "An act to incorporate the Madison and Beloit Railroad Company," approved August 19th, 1848.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The said company shall have power to change the location of the said railroad, and to terminate the same at any point that to them shall seem expedient on the south line of the State of Wisconsin, and at such termination as may unite with any other railroad.

SECTION 2. That said company shall have the right to extend said road to any point on the Wisconsin River that to them shall seem proper.

SECTION 3. The said company shall have power to increase their capital stock to six hundred thousand dollars.

MOSES M. STRONG,
Speaker of the Assembly.
SAMUEL W. BEALL,
Lieut.-Governor and President of the Senate.

Approved February 4, 1850.

NELSON DEWEY.

EXHIBIT D.

An act to amend an act entitled "An act to incorporate the Madison and Beloit Railroad Company."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The said company may extent their road from Janesville to Lake Winnebago, by the way of Fort Atkinson, Jefferson, and Watertown.

SECTION 2. For the purpose of such extension the said company may add ten thousand shares, of one hundred dollars each, to its capital stock.

SECTION 3. This act shall take effect so soon as said company,
45 by resolution adopted at a meeting of its board of directors shall assent thereto; and from and after such time such company shall be known as the "Rock River Valley Union Railroad Company."

SECTION 4. The said company whenever it shall deem the same expedient, may divide any portion of the capital stock of the company into shares of twenty-five dollars each, and every member of said company

shall be entitled to one vote therein, for every twenty-five dollars of stock which he may own.

MOSES M. STRONG,
Speaker of the Assembly.
SAMUEL W. BEALL,
Lieut. Gov. and Pres't of the Senate.

Approved February 9, 1850.

NELSON DEWEY.

EXHIBIT E.

An act to amend the charter of the Rock River Valley Union Railroad Company.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. That said company shall have power and authority to extend the Rock River branch of the road to Lake Superior.

SECTION 2. Said company may, in its discretion, increase the capital stock to three millions of dollars.

SECTION 3. Said company shall have power to increase its number of directors to any number not exceeding fifteen.

SECTION 4. The said company shall have the rights to enter upon any lands to survey and lay down said road, not exceeding one hundred and thirty feet in width and also to enter upon any lands adjoining said lands and obtain therefrom sand, gravel, stone, and other materials as may be necessary for the construction of said road, and whenever any lands or materials shall be required for the construction of said road, the same shall not be given or granted to said company, the compensation to be paid therefor by said company shall be ascertained
46 in the manner following, to wit: Said company shall apply to the judge of the circuit court of the first circuit, for the appointment of three commissioners, whose duty it shall be, at the earliest practicable time after their appointment, to proceed to examine and assess the damages which may be sustained by the several owners or claimants of the lands through which the road of said company is located; and the said commissioners in assessing said damages, shall deduct therefrom the benefit which said lands receive by the construction of said road. It shall be the duty of said company to give thirty days' notice of their application for the appointment of said commissioners, in one or more newspapers published in each of the counties, through which said road is laid out, and in case no newspaper is published in any one of said counties, then by posting up such notice on the door of the court-house in said county, thirty days before the time of making such application; and it shall be the duty of the commissioners to cause ten days' notice of their meeting to appraise the damages to any lands through which said road may run, to be given to the owner or claimant thereof, and in case said owner or claimant shall be a minor, insane person, or married woman, then such notice shall be given to the guardian, committee, or husband of such minor, insane person, or married woman. Either party feeling himself aggrieved by the decision of said commissioners may appeal to the circuit court of the county in which said lands may be situated, and said appeal shall be tried in the same manner as any suit commenced therein: *Provided*, That said company shall not in any manner be delayed in the construction of their road by any such appeal, but may

proceed immediately with such construction, on paying into the office of the clerk of said court the amount of moneys awarded to the owner or owners of said lands, and filing a bond with said clerk to said owner or owners, binding said company to pay such further sum as may be finally awarded against said company. The notice to be given by the commissioners *by* the owners of lands required for the railroad, shall be in
47 writing and delivered to said owner or owners, or left at their usual place of residence, if residents of this State, or if non-residents, then said notice to be given in a newspaper published in the county in which said land is situated, at least four weeks before making such appraisement.

SECTION 5. Said company is authorized and empowered to connect its road with the road of any railroad company or companies in the State of Illinois, or to become part owner or lessee of any railroad in said State; and any railroad company in said State of Illinois, duly organized under the laws of said State of Illinois, may connect its road with the road of said company, and may, in like manner, with the consent of said company, become part owner or lessee of the road of said company, or of any of its branches, or any portion thereof situated in this State.

SECTION 6. Said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the payment thereof in the usual form, said bonds not to exceed, in the aggregate, at the period of the completion of said road, three-fourths of the whole amount actually expended in said road and its appendages, as aforesaid, and may make and execute in the corporate name of said company, all necessary writings, notes, bonds, or other papers for any liabilities that it may incur in the construction or equipment of said road.

SECTION 7. The said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the franchise of the portions so completeted and put in operation shall vest in said company the same as though the whole were completed.

SECTION 8. Section second of the act to incorporate said company under the name of the Madison and Beloit Railroad Company, approved August the nineteenth, eighteen hundred and forty-eight, is hereby amended by striking from said section the words for "each mile separately."

SECTION 9. Sections eight, ten, eleven, and thirteen, of the act incorporating said company, entitled "An act to incorporate the Mad-
48 ison and Beloit Railroad Company," approved August the nineteenth, eighteen hundred and forty-eight, are hereby repealed.

(Signed) FREDERICK W. HORN,
Speaker of the Assembly.
SAM'L W. BEALL,
Lieut. Gov. and Pres't of the Senate.

Approved March 11, 1851.

NELSON DEWEY.

EXHIBIT G.

An act to authorize the railroad companies therein named to consolidate their capital stock.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The Illinois and Wisconsin Railroad Company, in the

State of Illinois, and the Rock River Valley Union Railroad Company, in this State, are hereby authorized and empowered to consolidate the capital stock of the two companies, and to make the two companies one, and to place the affairs and property of the two companies under the direction of one board of directors of not more than fifteen and not less than seven.

SECTION 2. The two companies, when consolidated and placed under the direction of one board of directors, may select, and choose, and nominate for itself any name that a majority of the directors may deem fit, and may adopt a common seal and alter the same at will; and after the said companies have consolidated, selected, and chosen a name, as aforesaid, it shall deposit with the secretary of state of this State a certificate signed by the president and secretary of the company so consolidated as aforesaid; and the said company shall be known by the name so selected, chosen, and certified, and under such name may contract and be contracted with, sue and be sued, plead and be impleaded, and shall have all the rights, privileges, and franchises conferred on the said companies by the laws of the States of Illinois and Wisconsin, re-
49 spectively, the same, and not otherwise, as though the said consolidation had not taken place, and the right of way may be taken in the same manner in all respects as though the said companies had not consolidated.

SECTION 3. The board of directors of the two companies, respectively, are authorized to complete the said consolidation by contract, and for that purpose may meet in any place in this State or the State of Illinois, and shall file a copy of the article of consolidation with the secretary of state of this State, and the State of Illinois, and in the event of the sale of the railway, depot-grounds, franchises, and property of the Rock River Valley Union Railroad Company under any mortgage now in existence, and being an incumbrance thereon, the same rights, franchises, and immunities shall accrue, inure, and pass to the purchasers and their associates under said sale that are granted to the said company by the laws of this State; and the same consolidation may be made as well after said sale as before; and the present board of directors of the said company, with the consent of the said purchasers, may remain and direct the affairs and control the property of the said company after the said sale, until the time fixed by law for the next election of directors, or until the consolidation shall take place the same as though the said sale had not been made.

SECTION 4. The consolidated company shall hold an election of directors on the first Tuesday of October of each year, unless otherwise directed by the by-laws of said company, at a place to be selected in one of the counties in the State of Illinois or this State, through which the said railroad passes, by the board of directors, and notice of said election shall be given to the stockholders by four weeks publication in one newspaper published in Chicago, in one at Madison, in one at Fond du Lac, and in one at Janesville; and the said election shall be conducted after the manner provided in the charter of the Rock River Valley Union Railroad Company, and the by-laws to be adopted by this consolidated company.

SECTION 5. The said consolidated company shall be and remain subject to the laws of the State of Wisconsin and the State of Illinois, respectively, and shall have in all respects the same privileges, as
50 though this consolidation had not taken place: *Provided*, The laws of the State of Illinois shall have no force or effect in the State of Wisconsin, under the provisions of this act.

SECTION 6. After consolidation as aforesaid, and before the first election of the directors by the stockholders, the affairs of the consoldated company shall be managed by the directors of the two companies, acting jointly, and as soon after consolidation as it may be deemed expedient to organize said consolidated company, said joint board of directors shall meet and elect a president, vice-president, secretary, and treasurer; and the said consolidated company being thus organized may make and execute in their corporated name all such writings, notes, bonds, or mortgages of their real or personal property, or any part thereof, as they may deem necessary to secure the payment of any liabilities incurred or to be incurred in the construction and equipment of their road, and may agree in such notes, bonds, and mortgages to pay such rates of interest as they may think proper, not exceeding ten per cent. per annum, and may sell and dispose of said notes, bonds, and mortgages at par, or at such prices above or below par, as they shall think proper.

SECTION 7. All municipal corporations, towns, villages, or cities which have by law been authorized to loan their credit to the said Rock River Valley Union Railroad Company, are hereby authorized to loan their credit to the same consolidated company, to the same extent and on the same terms as by law said corporations, towns, villages, or cities are now authorized to loan their credit to the said Rock River Valley Union Railroad Company.

SECTION 8. This act shall take effect from and after its passage.

Approved March 10, 1855.

EXHIBIT F.

An act to incorporate the Illinois and Wisconsin Railroad Company.

SECTION 1. *Be it enacted by the people of the State of Illinois represented in general assembly:* That Neill Donelly, Phineas H. Platt, Enos W. Smith, Henry Sherman, John McClure, Ithesian Taylor, Josiah D. Wright, Lindsey Joslyn, Michael A. McCahill, George
51 H. Bently, Joseph Golden, William Sloan, Martin Small, and their associates, successors, and assigns, be, and they are hereby, authorized and empowered to associate themselves together by the name and style of the Illinois and Wisconsin Railroad Company, with all the rights, privileges, and immunities that may be acquired by any railroad company under and by virtue of the provisions of an act entitled "An act to provide for a general system of railroad incorporations," approved Nov. 5, 1849; and the said company, when organized under the provisions of said act, are hereby authorized to take private property, in the manner prescribed by said act, for the purpose of building and maintaining a railroad from the north line of the county of McHenry, in the State of Illinois; thence to the village of Woodstock, in said McHenry County; thence to such point on the Chicago and Galena Union Railroad as may be deemed practicable to form a junction with the above-named Chicago and Galena Union Railroad Company, in the counties of Cook, Kane, and McHenry: *And it is further provided*, That the said Illinois and Wisconsin Railroad Company may have power, and they are hereby authorized, to unite and form a junction with any other railroad companies, in the counties Kane and Cook, on such conditions as the said Illinois and Wisconsin Railroad Company may deem proper: *And it is further provided*, That the said Illinois and Wisconsin Railroad Company are hereby authorized, and empowered to unite or consolidate their road with any railroad company now incorporated, or

that may hereafter be incorporated, in the State of Wisconsin, and place the said road, when consolidated, under the control and supervision of a joint board of directors, upon such conditions, provisions, and limitations as may be mutually agreed upon by said railroad companies.

SECTION 2. The said Illinois and Wisconsin Railroad, when organized as aforesaid, shall make out a statement, and forward it to the secretary of this State, at the end of each year, showing the amount of capital stock of said company, and the amount of indebtedness and resources of said company; taking the aggregate amount of expenditures, receipts, and resources per mile of the whole distance of said road in this
52 State, anything in the twenty-eighth and twenty-ninth sections of the State of Illinois, approved November fifth, one thousand eight hundred and forty-nine, to the contrary notwithstanding.

SECTION 3. The said Illinois and Wisconsin Railroad Company shall have full power, and they are hereby authorized at any future time, not to exceed fifty years, if they should deem it practicable, to extend their railroad from the village of Woodstock, in the county of McHenry, in this State, to the city of Chicago, in the county of Cook, and they shall have full power to unite or connect with any company or corporation associated together for railroad purposes, in said city of Chicago and county of Cook; and the said company may unite and connect with any railroad company or corporation running from the south part of this State and terminating at Chicago, or with any company or corporation running from the east through the State of Indiana, and terminating at Chicago, or passing through Chicago.

SECTION 4. The capital stock of said company is not to exceed one million of dollars, and this charter shall expire at the end of fifty years.

SECTION 5. This act to take effect from and after its passage.

Approved Feb. 12, 1851.

EXHIBIT I.

An act to facilitate and authenticate the foundation of a corporation by the purchasers of the Chicago, S't Paul and Fond du Lac Railroad Company.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. In case the railroad of the Chicago, S't Paul and Fond du Lac Railroad Company, or any part of the said railroad lying within this State, shall be sold by virtue of any mortgage or mortgages, deed or deeds of trust, either by foreclosure or other proceedings in law or equity, or by advertisement, in pursuance of a power or authority in any such mortgage or deed of trust contained, the purchaser or purchasers in any such case, his or their associates, successors, and assigns, if desiring to form a corporation under or by virtue of the laws of this State, or of the
53 States of Illinois or Michigan, or any or all of said States, may file in the office of the secretary of state of this State, a certificate specifying the name of the said corporation, the number of the directors, and the names of the directors for the first year, as designated in the said certificate, or as elected by the said purchaser or purchasers, their successors or assigns; which certificate shall be signed by the said purchaser or purchasers, or the survivor of them, or their or his successors or assigns; and, upon the filing of any such certificate, the persons who shall have signed the same, shall be a body politic and corporate by the name stated in such certificate; and the said corporation shall possess all the

privileges, powers, authorities, and capacities acquired by the said purchaser or purchasers, or possessed by the Chicago, St. Paul and Fond du Lac Railroad Companies, by virtue of any law of this State, or of the States of Illinois or Michigan; and shall likewise have power, by the vote of a majority in interest of the stockholders of the said corporation, and by instruments in writing, to assume any debts or liabilities of the said Chicago, St. Paul and Fond du Lac Railroad Company, and secure the same in the same manner as the said corporation might secure any debt contracted for the completion of said road, or for any other purpose, and shall also have power to create and issue a special stock to represent its lands and bonds; which stock shall be subject to assessments and entitled to dividend only to such extent, and upon conditions as shall be fixed by the act or agreement of the corporation creating the said stock, and not otherwise, but may be voted on the same as other stock.

SECTION 2. This act shall take effect and be in force from and after its passage.

W'M P. LYON,
Speaker of the Assembly.
E. W. CAMPBELL,
Lieut. Governor and President of the Senate.

Approved March 14th, 1859.

ALEX. W. RANDALL.

EXHIBIT J.

An act to authorize the sale of the Chicago, St. Paul, and Fond du
54 Lac Railroad, and to enable the purchasers thereof to form a corporation.

SECTION 1. *Be it enacted by the people of the State of Illinois represented in the general assembly:* That if any mortgage or deed of trust, heretofore or hereafter executed by the Chicago, St. Paul and Fond du Lac Railroad Company, a corporation existing under and by virtue of the laws of this State, shall be foreclosed, either by bill in chancery or by publication of a notice in the manner prescribed in such mortgage or deed of trust, and there shall be a sale of said Chicago, St. Paul and Fond du Lac Railroad, or any part of it, on or by virtue of any trust-deed, or on foreclosure of any mortgage thereupon, the party or parties acquiring title under any such sale, and their associates, successors, or assigns, shall have and acquire thereby, and shall exercise and enjoy thereafter, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by said mortgage and trust-deed enumerated and conveyed, which belonged to, and were enjoyed by the said Chicago, St. Paul and Fond du Lac Railroad Company, as fully and absolutely in all respects as the Chicago, St. Paul and Fond du Lac Railroad Company, its corporators, shareholders, officers, and agents might or could have done theretofore, had not such sale or foreclsure taken place; such purchaser or purchasers, their associates, successors, or assigns, may proceed to organize anew and elect directors, distribute and dispose of stock, take the same or another name, and may conduct their business generally under and in the manner provided in the charter of right of said Chicago, St. Paul and Fond du Lac Railroad Company, under and by virtue of its consolidation with other railroad companies, and generally to do and perform all things said Chicago, St. Paul and

Fond du Lac Railroad Company might do, under and by virtue of any laws of this or any other States through which the line of said company's road runs or is located, or under the chartered privileges, or rights acquired by charters of and consolidation with other railroad companies in such other States, with such variations in manner and form of organization as their altered circumstances and better conveniences may seem to require.

55 SECTION 2. Said new corporation, when so organized, shall have full power to mortgage, lease, or pledge their said road or any portion of the same, and any other estate, real, personal or mixed, of which they may be seized at the time, and *for* which they may acquire after the execution of such mortgage, deed of trust, or other instrument in writing, to secure any bonds or indebtedness, or evidence of indebtedness of said corporation, so created as aforesaid, or to pay for the whole or any part of the purchase-money or cost of said road, at the sale thereof to the purchasers thereof, their associates, successors, or assigns, or to pay, fund, or liquidate any existing liabilities or indebtedness of said Chicago, St. Paul and Fond du Lac Railroad Company, which said purchasers, their associates, successors, or assigns, may agree or elect to assume and provide for.

SECTION 3. Said corporation is hereby authorized and fully empowered in its corporate capacity, to borrow any sum or sums of money from any person or persons, corporation or body politic of any kind, and for any rate of interest which may be agreed upon by and between said company and the party *to* whom such money may be obtained and to make, execute, and deliver, in or out of this State, all necessary writings, notes, bonds, bills, mortgages, deeds of trust, and all other paper or securities, in amount or kind as may be deemed expedient by said corporation, in consideration of any such loan, or in discharge of any liability they may incur in the purchase, construction, repair, equipment, or operation of said road, or in any of the transactions of said company. And said company is hereby authorized, in its corporate capacity, to make, execute, issue, and deliver its bonds or obligations in such amounts as the directors of said company shall deem for the best interests of said company; and the directors of said company shall prescribe the sum or sums for which each of said bon's shall be issued, and the time or times, and place or places, when andwhere the principal and interest of the same shall be payable, the rate of interest which said bonds shall bear, and the manner and form in which the same, and the interest-coupons annexed to the same, shall be executed; and to secure the payment of any and all of said bonds, the said company is

56 hereby authorized and empowered, in its corporate capacity, to make, execute, and deliver a mortgage or mortgages, or deed or deeds of trust upon the whole or any part of said railroad, constructed or not constructed, and authorized to be purchased by this act, and upon any other and all of its estate, real, personal, or mixed, in possession or expectancy; and the said company is hereby authorized and empowered, in and by such mortgage or deed of trust, to confer upon the mortgagee or trustee full and ample power to enter into and upon, and take possession of, have, use, and enjoy, or sell or dispose of the whole or any part of said railroad or estate, real, personal, or mixed, together with the functions to said railroad, and all other corporate and other franchises, rights, and privileges of said railroad company, to take up and remove any of the track or fixtures belonging to said railroad; and the directors of said company shall prescribe all matters relating to the form and terms of said mortgage or deed of trust, and the manner

and mode for the execution of the same, and may provide for the payment of the principal and interest secured to be paid by such bond, either by the creation of a sinking-fund out of the earnings of said railroad company or in any other manner that they may deem best for the interest of said company; and said company may, by its agents in or out of the State, sell, dispose of, or hypothecate such bond when so issued as aforesaid, at par or at any other price greater or less than par, and for such sum or sums as they may think proper.

SECTION 4. And it may be lawful for the meeting of stockholders, directors, or officers of said company when so organized, to be held within or without this State, at such time or place or places as the by-laws of said company or the board of directors may from time to time appoint.

SECTION 5. This act shall be a public act, and shall be in force from and after its passage.

EXHIBIT K.

An act to authorize the Chicago and Northwestern Railway Company to construct a new line of road, commencing in the town of Neenah and county of Winnebago.

57 *The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. The Chicago and Northwestern Railway Company is hereby authorized to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate a new line of road, with side-tracks, over the routes, following: Beginning at some point on the line of said road, in the town of Neenah, in the county of Winnebago, and running thence, on the east side of said road, through the *village* [villages] of Neenah and Menasha, and across Doty's Island; thence keeping west of the canal to connect with the main line at such point as shall be most convenient; also beginning at some point on the line of said road, in the county of Out'gamie, and running thence, on the east side of said road, via the town of Howard, to the Michigan State line; and there is hereby conferred upon the said Chicago and Northwestern Railway Company, all rights, privileges, powers, and authority contained in the charter of said railway company, or in the charter of the Chicago, St. Paul and Fond du Lac, and Wisconsin and Superior Railroad Companies to which the said Chicago and Northwestern Railway Company is the successor.

SECOND 2. This act shall take effect and be enforced from and after its passage.

Approved March 8, 1862.

EXHIBIT L.

Galena and Chicago Union Railroad Company.—Ill. Laws, 1836, *page* 247.

An act to incorporate the Galena and Chicago Union Railroad Company.

SECTION 1. *Be it enacted by the people of the State of Illinois represented in general assembly*, That all such persons as shall become stockholders, agreeably to the provisions of this act, in the corporation hereby created, shall be, and, for the term of sixty years from and after the passage of this

act shall continue to be, a body corporate and politic, by the name of the "Galena and Chicago Union Railroad Company," and by that name shall have succession for the term of years above specified; may sue and be sued, complain and defend in any court of law or equity; may make and use a common seal, and alter the same at pleasure; may make
58 by-laws, rules, and regulations for the management of its property, the regulation of its affairs, and for the transfer of its stock not inconsistent with the existing laws and the constitution of this State, and of the United States; and may, moreover, appoint such subordinate agents, officers, and servants as the business of the said corporation may require, and allow to them a suitable compensation, prescribe their duties, and require bond for the faithful performance thereof, in such penal sums and with such sureties as they may choose, who shall hold their office during the pleasure of a majority of the directors of the said corporation.

SECTION 2. The said corporation shall have the right to construct, and during its continuance to maintain and continue a railroad, with a single or double track, and with such appendages as may be deemed necessary for the convenient use of the same, from the town of Galena, in the county of Joe Daviess, to such a point at the town of Chicago, as shall be determined, after a survey shall have been made of the route, to be the eligible, proper, direct, and convenient therefor.

SECTION 3. The capital stock of the said corporation shall be one hundred thousand dollars, which shall be deemed personal property, and shall be divided into shares of one hundred dollars each. The capital stock of said corporation may at any time hereafter be increased to a sum not exceeding one million of dollars, if the same shall be judged necessary to the completion of the said work, and the same shall be subscribed for and taken under the direction of the directors of the said corporation, whenever they shall direct one or more books to be opened for such purposes, and shall be subscribed and taken in such manner as the direction of the said corporation for that purpose, shall order and appoint.

SECTION 4. William Bennett, Thomas Drummond, J. C. Goodhue, Peter Semple, J. M. Turner, E. D. Taylor, and J. B. Thomas, jr., shall be commissioners for receiving subscriptions to the capital stock of said corporation, who shall give notice within twelve months after the passage of this act of the time and place where books will be opened at Galena and Chicago, and such other places as they may deem necessary, in some public newspaper, printed at said places, at least thirty
59 days previous to the opening of such books for the receiving subscriptions to the capital stock of said corporation. The majority of commissioners shall attend, at the time and place appointed by such notice for the opening of said books, and shall continue to receive such subscriptions to the capital stock of the said corporation, from all persons who will subscribe thereto, until the whole amount thereof shall have been subscribed, when the said books shall be closed. Each subscriber, at the time of subscribing, shall pay to the commissioners one dollar on each share of the stock subscribed for by him; and the said commissioners shall, as soon as the directors are elected, deliver to them the whole amount so received.

SECTION 5. The affairs of said corporation shall be managed by a board of seven directors, to be annually chosen by the stockholders from among themselves, as soon as may be after the stock has been subscribed. The commissioners shall give notice of the time and place, at which a meeting of the stockholders will be held for the choice of directors, and at such

time and place appointed for that purpose, the commissioners, or a majority of them, shall attend and act as inspectors of said election; and the stockholders present shall proceed to elect their directors by ballot, and the commissioners present shall certify the result of such election under their hands, which certificate shall be recorded in the books of the corporation, and shall be sufficient evidence of the election of the directors herein named. All future elections shall be held at the time and in the manner prescribed by the by-laws and regulations of the said corporation. Each stockholder shall be allowed as many votes as he owns shares at the commencement of each election, and a plurality of votes shall determine the choice; but no stockholder shall be allowed to vote at any election after the first for any stock which shall have been assigned to him within thirty days previous to the day of holding such an election. The said directors shall hold their offices for one year after their election, and shall elect one of their number president of the said board.

SECTION 6. The said corporation is authorized to construct, make, and use a single or double railroad or way, of suitable width and dimensions, to be determined by said corporation, on the line, course, or way
60 which may be designated and selected by the directors as the line, course, or way whereon to construct and make the same; and shall have power to regulate the time and manner in which goods, effects, and passengers shall be transported, taken, and carried on the same; and to prescribe the manner in which the said railroad shall be used, by what force the carriages to be used thereon may be propelled, and the rates of toll on the transportation of persons or property thereon, and shall have power to erect and maintain houses, toll-gates, and other buildings for the accommodation and management of the said road and transport thereon as may be deemed suitable to their interest; and they may also construct, maintain, and use such other lateral routes as may be deemed advantageous and expedient and necessary, under the same rights and privileges as by this act is prescribed for the construction of the main route; and it shall be lawful also for the said corporation to unite with any other railroad company already incorporated or which may be incorporated upon any part of the route of the said railroad upon such terms as may be agreed upon by the directors of said companies, and also to construct such other and lateral routes as may be necessary to connect them with any other route or routes which may be deemed expedient.

SECTION 7. If at any time after the passage of this act, it shall be deemed advisable by the directors of said corporation, to make and establish a good permanent turnpike road upon any portion of the route of the railroad, by this act authorized to be constructed, then the said directors are hereby authorized and empowered to construct a turnpike on any portion of the said route of the following dimensions: Not less than one hundred feet wide, twenty-two feet of which shall be based with stone or gravel or other hard substance, well compacted together, and of sufficient depth to secure a good foundation, where necessary, the whole of which shall be faced with gravel or stone of a depth not less than six inches, in such manner as to secure a firm and even surface, rising in the middle by a gradual arch; and when other roads may intersect it, shall be so constructed that carriages may conveniently pass over the turnpike road. And the said corporation is hereby authorized to erect at both ends of said road and at such other points upon
61 the line thereof as many gates as shall be deemed necessary thereon.

SECTION 8. It shall be lawful for said corporation to appoint toll-

gatherers to collect and receive of and from all persons using said road, the following rates of toll, to wit: For each and every mile of transport or travel upon said turnpike road for a man and horse, two cents; or for a single person, one cent; for four or six horse or ox wagon and driver, loaded, three cents; and for the same empty, two cents; for all four-horse carriages and driver, five cents; for a two-horse wagon, or one yoke of oxen and wagon, three cents; for two-horse pleasure carriages, four cents; for a one-horse carriage or gig, two cents; for horses, mules or cattle in droves, half a cent per head; for hogs, goats, and sheep, one mill per head. When sleds are used instead of wheels, one-half of the above specified tolls. And it shall be lawful for any toll-gatherer to stop and detain any person from going on said road, until they shall pay to him the toll properly charg'able to him, and when any person shall pay to the toll-gatherer the toll chargable to him, the toll-gatherer shall give him a ticket authorizing him to pass the whole distance of the road for which he has paid. And the president and directors shall cause to be kept upon each gate, in some conspicuous place where it may be easily read, a printed list of the tolls which may be lawfully demanded. Said corporation shall cause to be erected mile posts or stones to be maintained; and also erect guide-posts at the intersection of all highways leading into or from said turnpike road, on which shall be inscribed the name of the town or public place to which it leads; and, if any person shall willfully cut down such posts, or shall willfully break or throw down any of the said gates or turnpike, or shall dig up or spoil any of said road, or anything thereunto belonging, or shall forcibly pass either of the gates without having paid the legal tolls, such person shall pay and forfeit for every such offence and injury, the sum of twenty-five dollars to be recovered by the said corporation in an action of debt before any justice of the peace of the county where the offender or offenders may be found; and, if any person shall turn out of said road and pass any of the gates, and again enter upon such road to avoid the payment of tolls, he shall forfeit to the corporation the sum of five dollars, to be recovered in like manner.

SECTION 9. If any toll-gatherer shall unreasonably delay or
62 hinder any traveler or passenger, or shall demand more toll than by this act is allowed, he shall forfeit and pay to the person injured the sum of five dollars, in the manner provided in the preceding section; and, if he shall be unable to pay it, the corporation shall be held responsible therefor.

SECTION 10. As soon as any five miles of the turnpike shall be completed, said corporation may erect gates thereon, and collect the toll allowed by this act. And it shall be the duty of said corporation when said road shall have been completed, to keep it in good repair, and whenever, from any cause whatever, the same shall become injured, said corporation shall immediately proceed to repair the same. And it shall be lawful for the said corporation to commence the construction of the said railroad or way or turnpike, at such points on any part of the aforesaid route or routes heretofore described, as in its judgment, may appear expedient and proper. Said corporation are authorized to borrow any sum of money which may in their discretion be deemed necessary, not exceeding its capital stock to aid in the construction of the said roads, and, if it shall, at any time, appear to the said corporation that any part thereof, or any surplus funds is not necessary to be retained, the same may be loaned on such terms as the directors of the said corporation may deem proper, not, however, at a higher rate of interest than that now allowed by the laws of this State.

SECTION 11. In case the corporation shall not be able to acquire the title to the lands through which the said road shall be laid, by purchase or voluntary cession, it shall be lawful for said corporation to appropriate as much of said lands as may be necessary for its own use, for the purposes contemplated by this act on complying with the provisions of the six following sections.

SECTION 12. The directors may present a petition to the judge of the circuit court of the county in which the said land may be situated, setting forth by some proper description the lands which are wanted for the construction of said railroad or turnpike, or the appendages thereto, and the names of the owners thereof, if known, distinguishing with conveniences if it can be done, the parcels claimed in severalty by the respective owners, and praying for the appointment of appraisers
63 to assess the damages which the owners of such lands will severally sustain by reason of the appropriation thereof by the said corporation to its own use.

SECTION 13. On the presentment of said petition, said circuit judge shall appoint a day for the hearing of the parties in interest, and shall direct such notice as he shall deem reasonable to be given of the time and place of hearing; and in case it shall appear that any of the owners of said lands is a feme covert, an infant, or insane, or otherwise incompetent to take proper care of his or her interest, it shall be the duty of the said judge to appoint some discreet and reputable person to act in the premises in his or her behalf.

SECTION 14. At the time appointed for such hearing, the judge shall appoint three disinterested persons, freeholders, residents of the county in which said lands may lie for the purpose of assessing such damages, and in the order in which they were appointed, shall direct and specify what lands are proposed to be appropriated and occupied by the said corporation for the purposes aforesaid.

SECTION 15. Said appraisers, after being duly sworn before some officer properly authorized to administer oaths, honestly and impartially to assess such damages, shall proceed by viewing said lands, and by such other evidence as the parties may produce before them, to ascertain and assess the damages which each individual owner will sustain by the appropriation of his land for the use or accommodation of such railroad or turnpike, or their appendages.

SECTION 16. The said appraisers shall make a report to the said judge in writing, under their hands, reciting the order for their appointment, and specifying the several parcels described therein, with all necessary certainty, the names of the owners of the respective parcels, if known, and if not known, stating that fact, and specifying also the damages which the owners of the respective parcels will sustain by reason of the appropriation of the same for the purposes aforesaid, and in case either of the parties is dissatisfied with the assessment, the said judge may, on the hearing of the parties *and* interest, modify the assessment, as to him shall appear just.

SECTION 17. On the payment of the damages thus assessed, together with the expenses of assessment as the same shall be settled by
64 said judge, or on depositing the amount thereof, for the use of such owners in such bank or monied incorporation as the said judge shall direct; the said corporation shall immediately become entitled to the use of the said lands for the purposes aforesaid; and the report of the said appraisers, with the order of said judge modifying the same, if the same shall have been modified, shall be recorded in the office of the recorde*d* of the county in which said lands shall be situated, in the

same manner and the like effect as deeds are recorded, without any other proof than the certificate of the said judge that the report is genuine.

SECTION 18. And when the said order shall have been so recorded as aforesaid, the said corporation shall be seized and possessed of such land or real estate, and may enter upon and take possession and use the same for the purposes hereinbefore recited.

SECTION 19. The said corporation shall be bound to repair all public highways, bridges, and water-courses which may be injured in constructing the said railroad or its appendages, and shall restore them as far as practicable, to as good a condition as they were in before they were injured.

SECTION 20. The said corporation shall be allowed three years from the passage of this act for the commencement of the construction of the said railroad and turnpike; and in case the same shall not be completed within ten years thereafter the privileges herein granted shall be forfeited.

SECTION 21. Any person who shall willfully injure said road, or any of the appendages thereto, shall be deemed guilty of a misdemeanor, and shall forfeit to the use of the corporation a sum equal to three times the amount of damages occasioned by such injury, to be recovered, with costs of suit, in the name of such corporation, in an action of debt, before any court having cognizance thereof, or before any justice of the peace in the county where injury or offence may have been committed.

SECTION 22. This act shall be deemed and taken as a public act, and shall be construed beneficially for all purposes herein specified or intended, and all copies thereof printed by or under the direction of, the general assembly of this State shall be received in all courts, and places whatsoever in said State as sufficient evidence thereof, without further proof.

Approved Jan. 16, 1836.

65 EXHIBIT M.

An act to extend the powers of the Chicago and Northwestern Railway Company.

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SECTION 3. The Chicago and Northwestern Railway Company is hereby authorized to change, relocate, or take up such of its tracks, side-tracks, or branches, as it may deem necessary for the convenient management of its business; and said company, *as it may deem necessary for the convenient management of its business, and said company*, as now consolidated, may have and exercise all the powers heretofore conferred by the laws of this or any other State upon the Chicago and Northwestern Railway Company, and the Galena and Chicago and Union Railroad Company, or any other company consolidated with it.

SECTION 4. This act shall take effect and be in force from and after its passage.

Approved February 15, 1865.

EXHIBIT N.

An act to authorize the Chicago and Northwestern Railway Company to consolidate with the Baraboo Air-Line Railroad Company, and other railroad companies therein named.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. That the Chicago and Northwestern Railway Company is

hereby authorized and empowered to consolidate its stock, property, and franchises, with the stock, property, and franchises of the Baraboo Air-Line Railroad Company, with the stock, franchises, and property of the La Crosse, Trempealeau and Prescott Railroad Company, with the stock, property, and franchises of the Winona and St. Peter Railroad Company, and the stock, property, and franchises of the Winona, Mankato and New Ulm Railroad Company, or with either or any of the said companies; such consolidation or consolidations with either or with any of said companies shall be made on such terms as shall be agreed upon between the board of directors of said Chicago and Northwestern Railway Company and the board of directors of either or any of the
66 companies herein named, or between the executive committees of such boards, or either of them.

SECTION 2. The articles of such consolidation, or consolidations, shall prescribe the names of such consolidated company, and such company when consolidated may have and exercise all the powers now conferred by the laws of this State, or of any other State, upon either of the companies named herein.

SECTION 3. The consolidated company created under the provisions hereof shall have the power to construct and operate a line of railroad so as to connect the main line authorized to be constructed by the said Baraboo Air-Line Railroad Company, with the line of any railroad or railway in Wisconsin west of the range-line dividing ranges two (2) and three (3) east of the fourth (4th) principal meridian, and to operate the whole or any portion of the lines of either or any of the companies in this act named as a portion of its consolidated line.

SECTION 4. The consolidated company created under the provisions hereof is hereby authorized in its corporate capacity to borrow any sum or sums of money, and to make, execute, and deliver in or out of this State, all necessary writings, notes, or bonds, to secure the payment thereof, or for any other purpose, and to make, execute, and deliver a mortgage or mortgages upon the whole or any portion of its property, to secure the payment of any such writings, notes, or bonds. Such writings, notes, bonds, mortgage or mortgages, shall be in such manner and form as the board of directors of such consolidated company, or the executive committee thereof, shall prescribe, and may contain provisions for a sinking-fund, or for the payment of a portion of the bonds described in said mortgage, to be selected by lot in the manner therein provided, in any year or years before the whole becomes due, so that all of said bonds shall be paid at the time they mature.

SECTION 5. All acts and parts of acts inconsistent herewith are hereby repealed, and this act is hereby declared to be a public act, shall be favorably construed, and shall take effect from and after its passage and publication.

Approved February 17, 1871.

EXHIBIT O.

Copy of coupon-bond.

67 STATES OF ILLINOIS, WISCONSIN, MICHIGAN, IOWA, MINNESOTA, AND TERRITORY OF DAKOTA.

$1,000. $1,000.

Chicago and Northwestern Railroad Company.

No. No.

General consolidated gold bond.

For value received, the Chicago and Northwestern Railway Company promises to pay to the bearer hereof the sum of one thousand dollars in gold coin of the United States on the first day of December, one thousand nine hundred and two, with interest thereon at the rate of seven per cent. per annum, payable semi-annually in gold, on the first days of June and December in each year, until the principal sum shall become due, upon presentation of the annexed coupons, as they respectively fall due, at the office or agency of the Chicago and Northwestern Railway Company in the city of New York.

This bond is one of a series of coupon and registered bonds issued, and to be issued, to an aggregate amount not exceeding forty-eight millions of dollars, for the purpose of consolidating the entire mortgage debts of said railway company, and of the several railroad and railway companies whose stock is owned and whose railroads are controlled and operated by it, and which shall become consolidated with it; and is secured by a deed of trust, bearing date on the 30th day of November, A. D. 1872, upon all the lines of railroad, franchises, and property of said Chicago and Northwestern Railway Company, and of the other companies aforesaid severally.

The deed of trust provides for a sinking-fund, to be applied annually to the purchase and cancellation of this debt.

This bond is convertible into a registered bond of said company of the same issue, of amounts of one thousand, five thousand, and ten thousand dollars, at the office or agency of said company, in the city of New York.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon and duly signed by the trustee.

68 In witness whereof the said Chicago and Northwestern Railway Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and secretary, and has also caused the coupons hereto annexed to be signed by its secretary, on this 30th day of November, A. D. 1872.

{ C. AND N. W. R'Y CO. SEAL. } *President.*

Secretary.

It is hereby certified that the above bond is one of the bonds secured by the deed of trust bearing date on the 30th day of November, A. D. 1872, above mentioned.

UNION TRUST COMPANY OF NEW YORK, *Trustee.*
By *President.*

EXHIBIT P.

Copy of registered bond.

$10,000. $10,000.

STATES OF ILLINOIS, WISCONSIN, MICHIGAN, IOWA, MINNESOTA, AND TERRITORY OF DAKOTA.

Chicago and Northwestern Railway Company.

No. No.

General consolidated gold bond.

For value received, the Chicago and Northwestern Railway Company

promises to pay to , or assigns, the sum of ten thousand dollars, in gold coin of the United States, on the first day of December, in the year one thousand nine hundred and two, with interest thereon from the day of , 18 , inclusive, at the rate of seven per cent. per annum, payable semi-annually in gold, on the first days of June and December of each year, at the office or agency of the Chicago and Northwestern Railway Company, in the city of New York, until said principal sum becomes due.

This bond is transferrable on the books of this company at its office or agency aforesaid, and is one of a series of coupon and registered bonds, issued and to be issued, to an aggregate amount not
69 exceeding forty-eight millions of dollars, for the purpose of consolidating the entire mortgage-debts of said railway company, and of the several railroad and railway companies whose stock is owned and whose railroads are operated and controlled by it, and which shall become consolidated with it; and is secured by a deed of trust bearing date on the 30th day of November, A. D. 1872, upon all the lines of railroad, franchises, and property of said Chicago and Northwestern Railway Company, and of the other companies aforesaid, severally.

The deed of trust provides for a sinking-fund to be applied annually to the purchase and cancellation of this debt.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon, and duly signed by the trustee.

In witness whereof the said Chicago and Northwestern Railway Company has caused its corporate seal to be affixed and the same to be attested by the signatures of its president and secretary on this day of , A. D. 18 .

[C. & N. W. R'Y CO. SEAL.] , *President.*

, *Secretary.*

It is hereby certified that the above bond is one of the bonds secured by the deed of trust, bearing date on the 30th day of November, A. D. 1872, above mentioned.

UNION TRUST COMPANY OF NEW YORK, *Trustee.*
By *President.*

For value received, hereby assign unto , of the within bond issued by the Chicago and Northwestern Railway Company, and hereby authorize said company to transfer said bond on its books, at its office or agency in the city of New York.

Dated , 18 .

EXHIBIT H.

70 An act to authorize the Chicago, St. Paul and Fond du Lac Railroad Company, and the Wisconsin and Superior Railroad Company to consolidate.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. The Chicago, St. Paul and Fond du Lac Railroad Company, a corporation created under the laws of the States of Illinois and Wisconsin, by consolidation of the Illinois and Wisconsin Railroad Company in the State of Illinois and the Rock River Valley Railroad Company, in the State of Wisconsin, and the Wisconsin and Superior Rail-

road Company, a corporation created by the laws of the State of Wisconsin, are hereby authorized and empowered to consolidate the capital stock of the two companies, and to make the two companies one, and to place the affairs and property of the two companies under the direction of one board of directors of not less than thirteen and not more than seventeen, upon such terms and conditions as may be mutually agreed upon a majority of each of the two boards of directors of said companies respectively: *Provided*, that the stockholders representing a majority of the stock in each company to be thus consolidated consent to such consolidation. And the affairs, property, and business of the consolidated companies hereby created shall be conducted, managed, and carried on by the two boards of directors of said companies, jointly, acting as the board of directors of the consolidated company until the election of directors of the consolidated company, on the first Tuesday in October, in the year one thousand eight hundred and fifty-seven, as provided in section four (4) of this act. And thereafter the directors so elected shall have the powers of the joint board aforesaid. In the joint board aforesaid each director holding such office in both of the boards thus jointly acting, shall be entitled to two votes on any question before the board, unless otherwise ordered by the respective boards in agreeing upon the terms of consolidation aforesaid.

SECTION 2. Whenever the said two companies shall have agreed to consolidate, and settled the terms thereof in writing, in some form in
71 their discretion, either by resolutions of their respective boards of directors, or by written agreement, executed by some person or persons duly authorized in behalf of said companies; and when they shall have deposited with the secretary of state a certificate of the fact of such consolidation, signed by the president of each of the companies aforesaid, therefrom and thereafter all rights, franchises, privileges, grants, conveyances, powers, immunities, property, and causes of action of the said Wisconsin and Superior Railroad Company, and of the said Chicago, S't Paul and Fond du Lac Railroad Company, and also of the said two former companies, heretofore consolidated, to wit, the said Illinois and Wisconsin Railroad Company, and the said Rock River Valley Union Railroad Company shall be, and the same are hereby, declared to be thereby transferred to, conferred upon, merged in, belong to, and be of the property of, and be owned by the said consolidated company thus created, and the capital stock of the said consolidated company shall be the aggregate of the capital stock of the said two companies so consolidated, with power to increase the same to a sum not exceeding fifteen millions of dollars on the whole cost of its line of railroad or other property; and the said consolidated company thus created shall be, and is hereby to be, a body politic and corporate under the name of the Chicago, S't Paul and Fond du Lac Railroad Company, and may, under such name, contract and be contracted with, sue and be sued, plead and be impleaded with, and may take and enforce the right of way according to and in pursuance of the law applicable to either of the said companies so consolidated. After the certificates of consolidation aforesaid shall have been filed as aforesaid with the secretary of state, he is required, when requested so to do, and on payment of his fee, to make an official certificate that the aforesaid companies are consolidated into one company and corporation, under the name aforesaid, and such certificate shall be evidence in any court of law or equity, or wherever proof is required of the fact of consolidation; and that said consolidated company is a body corporation, with all the powers, privileges, rights, property, and causes of action by virtue

of this act conferred upon or required by said company. All rights or causes of action which either of the aforesaid companies have, or
72 might have before consolidation, may be prosecuted or defended after such consolidation in the name of the Chicago, S't Paul and Fond du Lac Railroad Company, (the name of the consolidated company,) in the same manner and same rights as if said consolidated company had been an original party to such cause of action when the same arose and occurred; and any person or corporation having any claim or demand against either of said companies, on or before such consolidation, may, after such consolidation, have and maintain suit therefor in any court having jurisdiction thereof against the said consolidated company after such consolidation.

SECTION 3. The said consolidated company hereby created shall be entitled to and invested with the title and ownership of all the lands, and all and singular the rights, privileges, and immunities granted or conferred by the act of Congress approved June 3d, A. D. 1856, entitled "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," to the extent of the whole of the lands granted by said act of Congress for the purpose of aiding in the construction of a railroad from Fond du Lac, on Lake Winnebago, northerly to the State line, as fully and completely as the said Wisconsin and Superior Railroad Company is by its charter entitled to and invested with the same; subject, however, to all the terms, conditions, restrictions, limitations, impositions, duties, and obligations contained in the charter of the said Wisconsin and Superior Railroad Company, and in said act of Congress, as far as the same are applicable to the consolidated company hereby created: *Provided, however*, That the consolidated company hereby created shall not be required to pay any greater sum for taxes relatively than any other railroad companies in this State are required by law to pay, excepting on that portion of their line of railroad indicated in said act of Congress, which shall be and remain as provided in the charter of said Wisconsin and Superior Railroad Company.

SECTION 4. The consolidated company hereby created shall hold an annual election of directors at a place to be selected in one of the counties of the State of Illinois or of this State, through which the said railroad passes. The first election shall be held on the first Tuesday of October, A. D. 1857, and notices of all annual and special meetings shall be given to the stockholders by publication in one or more news-
73 papers published in the cities of Chicago, Milwaukee, and New York, for thirty days prior to such election.

SECTION 5. All municipal corporations, towns, villages, or cities which have been or may be authorized to loan their credit, or subscribe to the capital stock of the Chicago, St. Paul and Fond du Lac Railroad Company, or to the Wisconsin and Superior Railroad Company, are hereby authorized to loan their credit or to subscribe to the capital stock of the consolidated company hereby created, to the same extent and on the same terms as by law said corporations, towns, villages, or cities, are now authorized to loan their credit, or to subscribe to the capital stock of the Chicago, St. Paul and Fond du Lac Railroad Company.

SECTION 6. Any railroad company in this State, whose route shall cross, intersect, come up to, or in contact with, the route of the said consolidated railroad company, at any point at or north of the city of Fond du Lac, shall have a right to have running connections with the said consolidated railroad company, upon fair and just principles, to be adjusted by the superintendants of said companies. In agreeing upon the terms of such running connections, the tariff rates for passengers and

freight per mile, shall be so adjusted that the said consolidated company shall have no advantage in the transportation of freight and passengers to Chicago, over any other railroad connecting as aforesaid in this State, running to any city or town on Lake Michigan. And if the superintendents of said consolidated railroad company and such connecting railroad shall be unable or fail to agree upon the terms of such running connections, they shall each select a railroad superintendent, and the two thus selected, if they can, shall choose a third person, and if they cannot agree, then such third person shall be selected or appointed by the governor, all of whom shall be in no way interested in either company; and they, or a majority of them, shall adjust the terms of such running connections and such tariff rates, and provide for suitable penalties and forfeitures. Such determination shall be reduced to writing and signed by said arbitrators, and one copy delivered to each of said companies, and the same shall be final and conclusive upon both parties.

SECTION 7. This is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the State printer, and when thus published, shall take effect and be in force.

Approved February 12, 1857.

74 EXHIBIT Q.

This indenture, made this 30th day of November, A. D. 1872, by and between the Chicago and Northwestern Railway Company, a body corporate, incorporated under and by virtue of the laws of the States of Illinois, Wisconsin, and Michigan, party of the first part, and the Union Trust Company of New York, a corporation of the State of New York, in the city of New York, party of the second part:

Whereas the said party of the first part is the owner of certain lines of railway in the States of Wisconsin, Illinois, and Michigan, hereinafter described; and whereas the said party of the first part is indebted in the aggregate in the sum of eighteen million seven hundred and forty-nine thousand five hundred dollars ($18,749,500) upon bonds heretofore issued by said company, and by the several railroad companies which have been consolidated with the party of the first part, and which have become the proper bonds and obligations of the said party of the first part, which bonds are secured by various trust-deeds or mortgages upon several and distinct portions of its lines of railroad;

And whereas the said Chicago and Northwestern Railway Company, party of the first part, for the purpose of consolidating the various outstanding debts secured by deeds of trust aforesaid, and also the mortgage-debts which it has assumed to pay, as hereinafter stated, and for the purpose of fully completing its various lines of railroad herein described, has determined to issue bonds, amounting in the aggregate to forty-eight millions of dollars, and to secure the same by this deed of trust upon the entire lines of railroad, property, and franchises owned by said company, and upon the railroads, franchises, and property of the several railroad companies, whose capital stock is owned, in whole or in greater part, by the party of the first part, upon consolidation of the said companies with the said party of the first part, as hereinafter mentioned.

Now, therefore, this indenture witnesseth, that for the purpose of securing the payment of the principal and interest of the bonds of said company hereby provided to be issued, amounting to the sum of forty-eight millions of dollars, such bonds to be designated, "general consolidated

gold bonds," and to be of the several denominations of five hun-
75 dred and one thousand dollars, so far as the same shall bear coupons, and such thereof as shall be registered bonds to be of the several denominations of one thousand, five thousand, and ten thousand dollars, and to be payable on the first day of December, A. D. 1902, in gold coin of the United States, with interest thereon at the rate of seven per cent. per annum, payable half-yearly, in gold coin of the United States, on the first days of December and June in each year, the said Chicago and Northwestern Railway Company, the said party of the first part, hath granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release, convey, and confirm, unto the said party of the second part, and its successors in the trust, for whomsoever may from time to time be the holders of said bonds hereby intended to be secured, the following lines of railway, owned and operated by the said party of the first part, to wit:

From Chicago, in the State of Illinois, to Negaunee, in the State of Michigan.

From Chicago to the east bank of the Mississippi River opposite Clinton, (the eastern thirty miles of which is laid with a double track.)

From Turner Junction to Freeport, in the State of Illinois.

From Kenosha, in the State of Wisconsin, to Rockford, in the State of Illinois.

From Belvidere, in the State of Illinois, to the La Crosse, Trempeleau and Prescott Junction, in the State of Wisconsin; and from Elgin, in the State of Illinois, to Geneva Lake, in the State of Wisconsin, including the Elgin and State Line and State Line and Union Railroads.

Also all the right, title, and interest of the said Chicago and Northwestern Railway Company in and to the Chicago, Iowa and Nebraska and the Cedar Rapids and Missouri River Railroads, extending from the east bank of the Mississippi River, opposite Clinton, to Council Bluffs, in the State of Iowa, including the bridge across the Mississippi River at Clinton, with a branch railroad from Clinton to Lyons, in the State of Iowa, which are leased in perpetuity to the party of the first part.

Also all the ways, rights of way, depot-grounds, structures, and buildings of every kind connected with or appertaining to any of the railroads hereinbefore named, and all the tolls, rents, issues, and profits and alienable franchise of the party of the first part connected therewith, including its rights and franchises as a corporation, and all its
76 right, title, and interest in and to the property of every description used on, upon, and in connection with the railroads leased to the said party of the first part as aforesaid.

And also all the rolling-stock, locomotives, tenders, passenger, mail, baggage, and express cars, freight, stock, dumping and flat cars, and cars of every description, and all the tools, machinery, patterns, materials, and implements connected with the equipment, working, operating, conducting, and repairing of the said railroads, or either of them, all of which chattels are declared to be fixtures and appurtenances to the lines of railroad owned as aforesaid by the said party of the first part.

To have and to hold all and singular the hereby granted premises, with the appurtenances and the goods and chattels hereinbefore bargained and sold unto the said party of the second part and its successors forever, subject, nevertheless, to the several deeds of trust or mortgages which are liens upon portions of the said premises and property specified in the deeds of trust and mortgages heretofore given to secure the bonds issued by said several railroad companies respectively, which

are now outstanding, amounting in the aggregate to eighteen millions seven hundred and forty-nine thousand five hundred dollars, ($18,749,500,) as hereinafter specified; provided always, (and these presents are upon the express condition,) that the party of the first part shall well and truly pay to the holders of the bonds to be issued, as hereinbefore stated, or of such of the said bonds as shall from time to time be outstanding and unpaid, and every of them, the principal and interest, moneys to grow due on said bonds respectively, at the times and in the manner mentioned in the said bond according to the true intent and meaning of the same; and provided also, that if the said party of the first part shall keep paid off and discharged all taxes and assessments which may at any time be imposed upon the real and personal estate hereby granted, bargained, and sold, or intended so to be, or upon any portion of either and all specific or general liens upon any of the property, real or personal, of the said party of the first part, the payment whereof may be material, necessary, or essential to the protection of the security hereby created; and provided also, that if the said party of the first part shall
77 at all times, until the bonds hereby secured shall have been fully paid, keep paid off and discharged any and all interest which shall become due and payable upon the bonds secured by such prior mortgage; and provided also, that if the said party of the first part shall pay off or discharge those of the said prior mortgages the payment whereof may be necessary or material to the protection of the security hereby created—then, and from thenceforth, these presents and the estate hereby granted shall cease, determine, and be null and void. But in case default shall be made in the payment of the principal or interest of said bonds hereby secured, or such of them as may, from time to time, be outstanding, or any of them or any part of either, as said principal or interest shall fall due, according to the tenor of said bonds, and such default shall continue for six months, or in case the party of the first part shall fail to keep paid off and discharged the taxes and assessments which may be imposed upon the mortgaged premises or property, or any part thereof as hereinbefore provided, or any specific or general liens on said premises or property, the payment whereof may be material, necessary, or essential to the protection of the security hereby created; or in case the said party of the first part shall fail to keep paid off and discharged the interest accruing from time to time upon the bonds secured by the prior mortgages upon said railroads; or in case the said party of the first part shall fail to pay off and discharge the said prior mortgages whenever the payment and discharge thereof shall become necessary or material to the protection of the security hereby created—then, and in either of the cases above-mentioned, the conveyance herein contained shall be in full force and virtue, and it shall be lawful for the party of the second part or its successors, and the party of the first part doth hereby fully authorize and empower them, with the aid and assistance of any person or persons, to enter into and upon, and to take possession of the said railroad and the branches thereof, and all and singular the lands, tenements, cars and engine houses, machine-shops, goods, chattels, and property, real and personal, hereby mortgaged, and every or any part thereof, and to hold the same as mortgagees in possession, for the benefit of the holders of the bonds hereby secured, and to retain and keep possession of said property, real and personal, use and operate the same, and to make, from time to time, all necessary and proper repairs and replace-
78 ments, and to receive the earnings, rents, issues, and profits thereof, until a sale thereof shall be made pursuant to law, ren-

dering an account thereof to the party of the first part; and after paying all current expenses, and the expenses of necessary repairs and replacements, and all other proper costs, charges, and expenses, taxes, assessments, interest on prior mortgages, and making all other payments necessary for the protection of the security hereby created, to apply the surplus, if any, to the payment, pro rata, of the interest and principal of the bonds hereby secured, or such of them as may be then outstanding; and in case default shall be made as aforesaid in the payment of the interest as it falls due upon the said bonds hereby secured, or any of them, or in the payment of the principal thereof, or of any of them, when due, or in making any of the payments of taxes, assessments, principal, or interest of prior incumbrances, the said party of the second part to these presents, and its successors, are hereby authorized and empowered to grant, bargain, and sell the property and premises hereby conveyed, and all the right, title, interest, and equity of redemption of the said party of the first part therein, at public auction in either of the cities of New York or Chicago, upon giving notice of the time and place of such sale by publication thereof at least three times a week for twelve weeks in a daily newspaper published in each of the cities of Chicago and New York, and by serving a copy of such notice upon the party of the first part at least sixty days before the day of sale, and in its discretion to adjourn such sale from time to time, and if so adjourning, to make the sale at the time and place to which it shall be so adjourned without further notice; and as the attorneys of the said party of the first part, by these presents duly constituted and appointed to mak', execute, seal, and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds, bill or bills of sale, conveyance or conveyances, in fee simple for the same, and out of the moneys arising from such sale, after paying the expenses of such sale, and all moneys expended for necessary repairs or replacements, or necessary expenses, to pay the several holders of the bonds and coupons hereby secured, the amount of principal and interest which may be due or unpaid to them respectively, rendering the overplus, if any, to the said party of the first part, its successors or assigns; which sale so to be made, shall forever be a perpetual bar, both in law and equity, against the said party of the first part, its successors or assigns, and all
79 persons so claiming or to claim the premises so sold or any part thereof by, from, or under the said party of the first part, its successors or assigns.

And this indenture further witnesseth that it is hereby covenanted and agreed that eighteen millions seven hundred and forty-nine thousand five hundred dollars ($18,749,500) of the said bonds hereby intended to be secured, shall be reserved by the said party of the second part and shall not be issued except for the purpose of being substituted for or for the payment of the principal of the bonds now outstanding, issued by said party of the first part, or by some of the railroad companies which have been consolidated with it, and the payment of which is secured by lien upon some portion of its railroad, or its equipment or earnings, and hereinafter specified as follows:

Preferred sinking-fund bonds of the Chicago and Northwestern Railway Company, dated July 1, 1859, payable 1885	$1,245,500
Funded coupon-bonds of the Chicago and Northwestern Railway Company, dated August, 1861, payable 1883	755,000

General first-mortgage bonds of the Chicago and Northwestern Railway Company, dated July 1, 1859, payable 1885	3,588,000
Appleton extension bonds of the Chicago and Northwestern Railway Company, dated November 1, 1860, payable 1885	148,000
Green-Bay extension bonds of the Chicago and Northwestern Railway Company, dated April 1, 1860, payable 1885.	289,000
Seven per cent. equipment bonds of the Chicago and Northwestern Railway Company, dated January 1, 1863, payable 1874	101,000
First-mortgage bonds of the Galena and Chicago Union Railroad Company, dated June 1, 1853, payable 1882...	1,785,000
Second-mortgage bonds of the Galena and Chicago Union Railroad Company, dated May 1, 1855, payable 1875...	948,000
Mississippi River bridge bonds of the Galena and Chicago Union Railroad Company, dated January 1, 1864, payable 1884	200,000
Bonds of the Galena and Chicago Union Railroad Company, issued for the purchase of the Elgin and State-Line Railroad, dated November 2, 1863, payable 1878..	135,000
First-mortgage bonds of the Peninsula Railroad Company, of Michigan, dated May 5, 1864, payable 1898	695,000
First-mortgage bonds of the Beloit and Madison Railroad Company, dated January 1, 1863, payable 1888	324,00
80 The consolidated sinking-fund bonds of the Chicago and Northwestern Railway Company, dated January 16, 1865, payable 1915, amounting to $2,686,000, and also such bonds of the same issue as may be substituted for the above-described prior bonds, as provided provided for in its mortgage trust-deed	$2,686,000
Madison extension first-mortgage sinking-fund gold bonds, dated April, 1871, payable 1911	3,150,000
Menomonee extension first-mortgage sinking-fund gold bonds, dated June 1, 1871, payable 1911	2,700,000
Aggregate amount	$18,749,500

For the payment of which mortgage liens now exist upon several and distinct portions of the railroads, property, and franchises herein conveyed, and subject to which liens this conveyance is made.

And whereas the said party of the first part is the owner of the whole or nearly the whole of the capital stock of certain railroad companies in the States of Illinois, Wiscons'n, Iowa, and Minnesota, and the Territory of Dakota, the several railroads of which companies are leased in perpetuity to the said party of the first part, or operated and controlled by it by virtue of its interest therein, as hereinafter specified, to wit:

The Chicago and Milwaukee Railroad, from Chicago, in the State of Illinois, to Milwaukee, in the State of Wisconsin, known as the Chicago and Milwaukee Railway;

The LaCrosse, Trempeleau and Prescott Railroad, in Wisconsin, from its junction with the Chicago and Northwestern Railway, near LaCrosse, to a connection across the Mississippi River bridge, at Winona, with the Winona and St. Peter Railroad;

The Winona and St. Peter Railroad, from Winona, in the State of Minnesota, to the Big Sioux River, including the Winona and St. Peter

Railroad, in the Territory of Dakota, and the bridge across the Mississippi River, at Winona, with the branch line to Mankato, known as the Winona, Mankato, and New Ulm Railroad;

The Iowa Midland Railway, from Lyons to Anamosa, in the State of Iowa;

The Northwestern Union Railroad, from Milwaukee to Fond du Lac, in the State of Wisconsin, with a branch to Lodi, and also a branch to the iron mines in Dodge County, in said State;

The St. Charles Railroad, from the town of St. Charles to the town of Batavia, in the State of Illinois, and the branch line from Stanwood to Tipton, in the State of Iowa, known as the Stanwood and
81 Tipton Railroad.

And whereas the said several railroad companies whose stock is owned by said party of the first part, as aforesaid, have severally issued bonds secured by trust deeds or mortgages upon their respective lines of railroad severally, with their equipments and appurtenances, and upon the franchises of said companies respectively, which said bonds now outstanding amount in the aggregate to the sum of sixteen millions five hundred and ninety-nine thousand five hundred dollars, ($16,599,500) the payment of which has been assumed by the said party of the first part, and are as follows, viz:

First-mortgage bonds of the Chicago and Milwaukee Railroad Company, dated May 1, 1854, payable 1874		$397,000
Second-mortgage bonds of the Milwaukee and Chicago Railroad Company, dated February 1, 1854, payable 1874		182,000
Third-mortgage bonds of the Milwaukee and Chicago Railroad Company, dated June 1, 1863, payable 1898		10,500
First-mortgage bonds of the Chicago and Milwaukee Railway Company, dated August 1, 1863, payable 1898		1,135,000
LaCrosse, Trempeleau and Prescott Railroad Company first mortgage bonds, dated April 1, 1868, payable 1878.		1,000,000
Winona and St. Peter Railroad first-mortgage bonds, dated January 1, 1867, payable 1887		2,750,000
Winona and St. Peter Railroad Company second-mortgage bonds, dated November 1, 1867, payable 1907		1,650,000
Winona and St. Peter Railroad extension first-mortgage sinking-fund gold-bonds, dated December 1, 1871, payable 1916	$4,375,000	
Winona and St. Peter Railroad Company of Dakota, same class, for completion of road in Dakota	250,000	
		4,625,000
Iowa Midland Railway Company first-mortgage bonds, dated October 1, 1870, payable 1900		1,350,000
Northwestern Union Railway Company first-mortgage sinking-fund gold-bonds, dated June 1, 1872, payable 1917		3,500,000
Aggregate amount		$16,599,500

And whereas it is contemplated by the party of the first part to make an agreement of consolidation with each of the several railroad
82 companies aforesaid, the payment of whose bonds has been assumed by said party of the first part, and whose stock is now

held in whole or in greater part by it as aforesaid, the right to make such consolidation being hereby expressly reserved, it is hereby covenanted and agreed that in case such consolidation shall be made, the railroads, property, and franchises of the company which may be so consolidated with the party of the first part, shall be included in and be subject to the provisions of this indenture and lien hereby created; and whenever any such consolidation shall be made, the said party of the first part shall give any further assurance in law to subject the railroad property and franchises of such consolidated company to the lien of this indenture that shall be necessary and proper for that purpose, and be required by said trustee.

And it is hereby covenanted and agreed that the further sum of sixteen millions five hundred and ninety-nine thousand five hundred dollars ($16,599,500) of said bonds hereby intended to be secured, shall be reserved by the said party of the second part for the purpose of being substituted for, or for the payment of the principal of the bonds aforesaid issued by the several railroad companies respectively, whose stock is owned in whole or in greater part by the said party of the first part, and whose roads are leased to or controlled and operated by it as aforesaid, and which shall become consolidated with the said party of the first part as hereinbefore provided.

And it is hereby further covenanted and agreed that on the 1st day of June in every year after 1873, the party of the first part shall pay to the party of the second part one per cent. of the amount of the bonds actually issued under this deed of trust and then outstanding, and shall also pay to the said party of the second part from time to time the net proceeds of the lands, as hereinafter mentioned, which several sums of money shall form a sinking-fund for the payment of the bonds secured by this deed of trust.

The party of the second part, trustee under this conveyance, shall invest the said several sums of money, together with all accumulations of interest thereon in the manner following, that is to say, first, in the purchase of the bonds secured by these presents; but it shall not purchase the same at more than the par value thereof without the consent, in writing, of the party of the first part; secondly, if the said trustee shall be unable to purchase the aforesaid bonds at par or less
83 then the said trustee shall purchase at public or private sale, at the lowest price (not above par) at which it may be able to obtain the same, not exceeding their market value at the New York Stock Exchange, any railroad bonds issued by the Chicago and Northwestern Railway Company, or by any company consolidated with it, or in the purchase of any bonds the payment of which it has assumed as aforesaid; and the bonds so purchased or delivered to the said trustee on account of the sinking-fund shall be forthwith cancelled and destroyed. And in case a sufficient amount of said bonds cannot be purchased at such rate within three months, then the said money, or any balance thereof, shall be invested in such manner as the trustee may deem proper.

And whereas the party of the first part is now entitled to certain land-grant lands from the United States and from the State of Michigan, and will become entitled to further grants of land from the United States and from the State of Michigan, upon the completion of its Menomonee extension; and whereas the Winona and St. Peter Railroad Company aforesaid will also become entitled to land-grant lands from the United States, upon completion of its railroad to the Big Sioux River, in Dakota:

Now, therefore, the said party of the first part hereby covenants and agrees to and with the holders of any of the bonds hereby provided to be issued, that it will receive the same at their par value and accrued interest in payment for any of the land-grant lands received, or which may be received, by it on account of the construction or consolidation of the railroads herein described, and shall be sold and conveyed by it, subject, however, to any prior lien existing on said lands to secure the payment of any of the above specified and described bonds.

And the party of the first part also covenants and agrees to and with such holders that, after first deducting all expenses that shall have been incurred by it on account of said lands, whether in payment of taxes or otherwise, it will forthwith apply the net proceeds of such sales to the payments into the sinking-fund hereinbefore provided.

And it is hereby covenanted and agreed that any of the coupon-bonds the issue whereof is herein provided for, may, at the option of the holder thereof, be converted into or exchanged on the first days of June and December, in each year, for registered bonds, the issue whereof
84 is herein provided for; and that the party of the first part shall permit the holders of the said registered bonds, from time to time, to transfer the same, and that it will provide for the issue of said registered bonds in the place and stead of those surrendered for cancelment on such transfer; and this indenture shall enure to the benefit and security of the holders of the new bonds which may be issued on such transfer and cancelment.

The trustee shall have full power in its discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said railway company any lands acquired or held for the purposes of stations, depots, shops, or other buildings, and shall also have power to convey, as aforesaid, on like request, any lands, or property which, in the judgment of the trustee, shall not be necessary for use in connection with the said railroad, or which may have been held for a supply of fuel, gravel, or other material; and also to convey as aforesaid, on like request, any lands not occupied by the track which may become disused by reason of a change of the location of any station-house, depot, shop, or other building connected with the said railroad, and such lands occupied by the track and adjacent to such station-house, depot, shop, or other building, as the said railroad company may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change and to such other changes in the location of the track or depot, or other buildings, as in its judgment shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; but any lands which may be acquired for permanent use in substitution for any so released shall be conveyed to the trustee upon the trusts of these presents, and the trustee shall also have full power to allow the said railroad company, from time to time, to dispose of, according to its discretion, such portions of the equipments, machinery, and implements at any time held or acquired for the use of the said railroad as may have become unfit for such use, replacing the same by new, which shall be conveyed to the trustee, or be otherwise made subject to the operation of these presents.

It is hereby declared and agreed that it shall be the duty of the trustee to exercise the power of entry hereby granted, or both, or to take appropriate proceedings in equity or at law to enforce the
85 rights of the bondholders under these presents, upon the requisition in writing as hereinafter specified.

1. If the default be as to interest or principal of any bond, such requisition upon the said trustee shall be by holders of not less than one hundred thousand dollars in the aggregate amount of said bonds; and upon such requisition and a proper indemnification by the persons making the same to the trustee against the cost and expenses to be by said trustee incurred, it shall be the duty of the trustee to enforce the rights of the bondholders under these presents by entry, sale, or legal proceedings as it shall deem most expedient for the interest of all the holders of the said bonds.

2. If the default be in the omission of any act or thing required by the covenant hereinafter contained, or for the further assuring of the title of the trustee to any property or franchises now possessed or hereafter acquired, *an* in the omission to comply with any other provision herein contained to be performed or kept by the said railway company, then, and in either of such cases, the requisition shall be as aforesaid; but it shall be within the discretion of the trustee to enforce or waive the rights of the bondholders by reason of such default, subject to the power hereby declared by a majority in interest of the holders of the said bonds by requisition in writing signed by such majority, to instruct the said trustee to waive such default, or upon adequate indemnity as aforesaid to enforce their rights by reason thereof; provided that no action of the said trustee, or bondholders, or both, in waiving such default, or otherwise, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom.

And the said party of the first part, for itself and its successors, in consideration of the premises, and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby further covenants and agrees to and with the said party of the second part, its successors and assigns, that the said party of the first part, and its successors, shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustee, execute, deliver, and acknowledge all such further deeds, conveyances, and assurances in the law, for the better assuring unto the said trustee the railroads, equipments, and appurtenances hereinbefore mentioned, or intended so to be, and all other property and things
86 whatsoever, which may be hereafter acquired for use in connection with the same or any part thereof, and all franchises pertaining thereto now held or hereafter required as shall be necessary and proper for that purpose, and shall be required by said trustee.

And the said party of the first part, for itself and its successors, in consideration of the premises and of one dollar to it duly paid by the said party of the second part, further covenants and agrees to and with the said party of the second part, its successors and assigns, that it, the said party of the first part and its successors, shall and will at all times hereafter keep open an office or agency in the city of New York for the payment of the principal and interest of and upon the bonds herein provided to be issued, as the same shall become payable, and for the transfer and registration of the said bonds, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and demand of payment of all and every of the bonds and coupons aforesaid, which may become payable during the continuance of such default.

In witness whereof, the said party of the first part has caused its corporate seal to be affixed hereto, and these presents to be subscribed by its president and secretary. And the said party of the second part in witness of its acceptance of the conveyance and trust herein con-

ferred, has caused its corporate seal to be hereto affixed and attested by its president and secretary the day and year first herein written,

President.

Secretary.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November A. D. one thousand eight hundred and seventy-two, before me, Charles Nettleton, a commissioner of the State of Illinois in and for the State of New York, residing in said city of New York, personally appeared John F. Tracy, the president of the Chicago and Northwestern
87 Railway Company, and Charles R. Marvin, the secretary of the same company, who are personally known to me to be the president and secretary of said company, and being duly sworn they did depose and say that he, the said John F. Tracy, resided in the city of Chicago, in the State of Illinois; that he, the said Charles R. Marvin, resided in the city of Brooklyn, in the State of New York; that he, the said John F. Tracy, was the president of the said company; that he, the said Charles R. Marvin was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by like order, as the president and secretary of said company respectively. And the said John F. Tracy and Charles R. Marvin, also acknowledged to me that they signed, sealed, and delivered the said instrument as their free act and deed, and the free act and deed of the said Chicago and Northwestern Railway Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal, this 30th day of November, A. D. one thousand eight hundred and seventy two.

[SEAL.] CHARLES NETTLETON,
Commissioner for Illinois in New York..

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that, on this 30th day of November, A. D. one thousand eight hundred and seventy-two, before me, Charles Nettleton, a commissioner of the State of Michigan in and for the State of New York residing in said city of New York, personally appeared John F. Tracy, known to me to be the president of the Chicago and Northwestern Railway Company, and Charles R. Marvin, known to me to be the secretary of the same company, and they severally acknowledged the execution of the foregoing instrument to be the free act and deed of the said company. And I further certify that I know the seal affixed to said instrument to be the corporate seal of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Michigan in New York.

88 STATE OF YEW YORK,
City and County of New York, ss:

Be it remembered that on this thirtieth day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Wisconsin in and for the State of New York, residing in said city of New York, personally appeared John F. Tracy, the president of the Chicago and Northwestern Railway Company, and Charles R. Marvin, the secretary of the same company, who are to me personally known to be the president and secretary of said company, and being by me duly sworn, they did depose and say that he, the said John F. Tracy, resided in the city of Chicago, in the State of Illinois; that he, the said Charles R. Marvin, resided in the city of Brooklyn, in the State of New York; that he, the said John F. Tracy was the president of said company; that he, the said Charles R. Marvin, was the secretary of the same company; that they knew the corporate seal of the said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company respectively. And the said John F. Tracy and Charles R. Marvin *Marvin*, also acknowledged to me that they had executed the foregoing instrument for the uses and purposes therein mentioned, and that the same was their free act and deed, and the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Wisconsin in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner for the State of Minnesota, in and for the State of New York, residing in said city of New York, personally appeared John F. Tracy, the president of the Chicago and Northwestern Railway Company, and Charles R. Marvin, the secretary of the same company, who are personally known to me to be the president and secretary of said company, and being duly sworn, they did
89 depose and say that he, the said John F. Tracy, resided in the city of Chicago, in the State of Illinois; that he, the said Charles R. Marvin, resided in the city of Brooklyn, in the State of New York; that he, the said John F. Tracy, was president of the said company; that he, the said Charles R. Marvin, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order, as the president and secretary of the said company respectively. And John F. Tracy and Charles R. Marvin acknowledged to me that they had executed the foregoing instrument freely and voluntarily, and for the uses and purposes therein mentioned, and that the same was their free and voluntarily act and deed, and the free and voluntary act and deed of the said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Minnesota in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, 1872, before me, Charles Nettleton, a commissioner of the State of Iowa in and for the State of New York, residing in said city of New York, personally appeared John F. Tracy, the president of the Chicago and Northwestern Railway Company, and Charles R. Marvin, the secretary of the same company, who are to me personally known to be the president and secretary of said company, and being duly sworn they did depose and say that he, the said John F. Tracy, resided in the city of Chicago, in the State of Illinois; that he, the said Charles R. Marvin, resided in the city of Brooklyn, in the State of New York; that he, the said John F. Tracy, was the president of said company; that he, the said Charles R. Marvin, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company,
90 was such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company respectively. And the said John F. Tracy and Charles R. Marvin also acknowledged the foregoing instrument to be their voluntary act and deed, and the voluntary act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, this 30 day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Iowa in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the Territory of Dakota in and for the State of New York, residing in said city of New York, personally appeared John F. Tracy, the president of the Chicago and Northwestern Railway Company, and Charles R. Marvin, the secretary of the same company, who are personally known to me to be the president and secretary of the said company, and being duly sworn they did depose and say, that he, the said John F. Tracy, resided in the city of Chicago, in the State of Illinois; that he, the said Charles R. Marvin, resided in the city of Brooklyn, in the State of New York; that he, the said John F. Tracy, was the president of said company; that he, the said Charles R. Marvin, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company, was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respectively. And the said John F. Tracy and Charles R. Marvin also acknowledged to me that they had executed the foregoing instrument freely and voluntarily, and for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed, and the free and voluntary act and deed of said company.

91 In witness whereof I have hereunto set my hand and affixed my official seal this 30 day of November, A. D. 1872.

CHARLES NETTLETON,
Commissioner for Dakota in New York.

STATE OF NEW YORK,
City and County of New York, ss :

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Illinois in and for the State of New York, residing in said city of New York, personally appeared Isaac H. Frothingham, the president of the Union Trust Company, of New York, and Charles T. Carlton, the secretary of the same company, who are to me personally known to be the president and secretary of said company, and being duly sworn they did depose and say that they resided in the city of Brooklyn, in the State of New York ; that he, the said Isaac H. Frothingham, was the president of said company ; that he, the said Charles T. Carlton, was the secretary of the same company ; that they knew the corporate seal of said company ; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal ; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respectively. And the said Isaac H. Frothingham and *and* Charles T. Carlton also acknowledged to me that they signed, sealed, and delivered the said instrument as their free act and deed, and the free act and deed of the said Union Trust Company of New York for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Illinois in New York.

STATE OF NEW YORK,
City and County of New York, ss :

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Michigan in and for the State of New York, residing in said city of New York,
92 personally appeared Isaac H. Frothingham, known to me to be the president of the Union Trust Company of New York, and Charles T. Carlton, known to me to be the secretary of the same company, and they severally acknowledged the execution of the foregoing instrument to be the *the* free act and deed of the said company. And I further certify that I know the seal affixed to said instrument to be the corporate seal of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Michigan in New York.

STATE OF NEW YORK,
City and County of New York, ss :

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Wisconsin in and for the State of New York, residing in said city of New York, personally appeared Isaac H. Frothingham, the president of the Union Trust Company of New York, and Charles T. Carlton, the secretary of the same company, who are to me personally known to be the president and secretary of said company, and being duly sworn, they did depose and say that they resided in the city of Brooklyn, in the State of New York ; that he, the said Isaac H. Frothingham, was the president of said company ; that

he, the said Charles T. Carlton, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respectively. And the said Isaac H. Frothingham and Charles T. Carlton also acknowledged to me that they had executed the foregoing instrument for the uses and purposes therein mentioned, and that the same was their free act and deed, and the free act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Wisconsin in New York.

93 STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Minnesota in and for the State of New York, residing in said city of New York, personally appeared Isaac H. Frothingham, the president of the Union Trust Company of New York, and Charles T. Carlton, the secretary of the same company, who are to me personally known to be the president and secretary of said company; and being duly sworn they did depose and say that they resided in the city of Brooklyn, in the State of New York; that he, the said Isaac H. Frothingham was the president of said company; that he, the said Charles T. Carlton, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respectively. And the said Isaac H. Frothingham and Charles T. Carlton also acknowledged to me that they had executed the foregoing instrument freely and voluntarily, and for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed, and the free and voluntary act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES NETTLETON,
Commissioner for Minnesota in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the State of Iowa in and for the State of New York, residing in said city of New York, personally appeared Isaac H. Frothingham, the president of the Union Trust Company of New York, and Charles T. Carlton, the secretary of the same company, who are personally known to me to be the president and secretary of the same company; and being by me duly sworn,
94 they did depose and say that they resided in the city of Brooklyn, in the State of New York; that he, the said Isaac H. Frothingham was the president of said company; that he, the said Charles T. Carl-

ton, was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respectively. And the said Isaac H. Frothingham and Charles Carlton also acknowledged the foregoing instrument to be their voluntary act and deed, and the voluntary act and deed of said company, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL]. CHARLES NETTLETON,
Commissioner for Iowa in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 30th day of November, A. D. 1872, before me, Charles Nettleton, a commissioner of the Territory of Dakota in and for the State of New York, residing in said city of New York, personally appeared Isaac H. Frothingham, the president of the Union Trust Company of New York, and Charles T. Carlton, the secretary of the same company, who are personally known to me to be the president and secretary of said company, and being by me duly sworn they did depose and say that they resided in the city of Brooklyn, in the State of New York; that he, the said Isaac H. Frothingham, was the president of said company; that he, the said Charles T. Carlton was the secretary of the same company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument purporting to be the corporate seal of said company was such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they signed their names thereto by the like order as the president and secretary of said company, respect,
95 ively. And the said Isaac H. Frothingham and Charles T. Carlton, also acknowledged to me that they had executed the foregoing instrument freely and voluntarily, and for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed and the free and voluntary act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this 30th day of November, A. D. 1872.

[SEAL.] CHARLES T. NETTLETON,
Commissioner for Dakota in New York.

On the same day, to wit, on the 4th day of June, A. D. 1874, a writ of subpœna issued out of said clerk's office against said defendants in said entitled cause, which said writ, together with the return of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

The President of the United States of America to George H. Paul, Joseph H. Osborn, John W. Hoyt, A. Scott Sloan, and the Chicago and Northwestern Railway Company, greeting:

You are hereby commanded that you personally appear before the

judges of the circuit court of the United States of America for the western district of Wisconsin, in our court of chancery, in and for the district aforesaid, on the first Monday of July next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court by De Witt C. Lawrence, Cyrus J. Lawrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott, and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

96 This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said George H. Paul, Joseph H. Osborn, John W. Hoyt, A. Scott Sloan, and the Chicago and Northwestern Railway Company, if to be found in his district, and due return thereof make.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of United States, at the city of Madison, in said district, this 4th day of June, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth.

[SEAL.] F. M. STEWART, *Clerk.*

C. B. LAWRENCE, *Solicitor.*

It is ordered by our said court that the said George H. Paul, Joseph H. Osborn, John W. Hoyt, A. Scott Sloan, and the Chicago and Northwestern Railway Company, the defendants aforesaid, do enter their appearance in this suit in the clerk's office on or before the day and time at which this subpœna is returnable as aforesaid, otherwise the bill filed may be taken as confessed.

Marshal's return.

Served on the within-named the Chicago and Northwestern Railway Company by delivering to George Frank, the agent of said company at Madison, Wisconsin, a copy of the within subpœna, June 5, 1874. And served on the within-named Joseph H. Osborn, and John W. Hoyt, by delivering to each of them personally a copy of the within subpœna, this June 5, 1874. And served on the within-named A. Scott Sloan by delivering to him personally a copy of the within subpœna, June 12, 1874. And served upon the within-named George H. Paul by delivering to him personally a copy of the within subpœna, this June 19, 1874.

F. W. OAKLEY, *Marshal,*
By W. S. MAIN, *Deputy.*

On the same day, to wit, on the fourth day of June, A. D. 1874, the said complainants, by their solicitor C. D. Lawrence, filed motion

97 for an injunction as follows, to wit:

Motion for an injunction.

CHICAGO, *June* 1, 1874.

To the Hon. A. Scott Sloan, attorney-general of the State of Wisconsin, and Joseph H. Osborn, George H. Paul, and John W. Hoyt, railroad commissioners of Wisconsin.

GENTLEMEN: You are hereby notified that, on the fourth day of June, A. D. 1874, at the city of Madison, in the State of Wisconsin, I shall, as attorney for De Witt C. Lawrence, Cyrus J. Lawrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott, apply to the Hon.

Thomas Drummond, judge of the circuit court of the United States for the western district of Wisconsin, for an injunction restraining you and each of you from instituting any proceedings, legal or other, or from taking any measures of any kind for the purpose of enforcing or executing the provisions of an act of the legislature of the State of Wisconsin, passed March 11th, 1874, and entitled "An act relating to railroads, express and telegraph companies in the State of Wisconsin," at which time and place you can be present if you see proper. The injunction will be moved for upon the bill, a copy of which is herewith given you, and the motion for the injunction will be in accordance with the prayer of said bill.

C. B. LAWRENCE.

On this 5th day of June, in the June term, A. D. 1874, of said court, in the record of the proceedings thereof in the said entitled cause, before the honorable Thomas Drummond and the honorable James C. Hopkins, judges, is the following entry, to wit:

98 DE WITT C. LAWRENCE, CYRUS J. LAWrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott
vs.
GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. Hoyt, A. Scott Sloan, and The Chicago and Northwestern Railway Company. } In equity.

This day came the parties, by their solicitors, C. B. Lawrence, for the complainants, and I. C. Sloan, for the defendants, and, by agreement of parties, it is ordered that the hearing on the motion for an injunction be, and the same is hereby, postponed to a future day during the present term to be fixed by the court, notice of which is to be given to the solicitors of the respective parties.

On this day, to wit, the 4th day of July, in the June term, A. D. 1874, of said court, in the record of the proceedings thereof in said entitled cause, before the honorable David Davis and the honorable Thomas Drummond and the honorable James C. Hopkins, judges, is the following entry, to wit:

Order denying injunction.

DE WITT C. LAWRENCE, CYRUS J. LAWRENCE, Darius W. Lawrence, William G. Wiley, and Waite Talcott
vs.
GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. Hoyt, A. Scott Sloan, and The Chicago and Northwesterrn Railway Company. } In equity.

The motion for an injunction coming on to be heard upon the bill of complaint, exhibits, and affidavits, and having been argued by counsel of the respective parties, Mr. Lawrence and Mr. Stoughton appear-
99 ing as solicitors for the complainants, and Mr. Sloan and Mr. Dixon appearing as solicitors for the defendants; and the court, being now sufficiently advised, doth order that the motion for an injunction be, and the same is hereby, denied.

On this day, to wit, the 8th day of July, A. D. 1874, said defendants, by their solicitors, filed in said clerk's office their demurrer in said entitled cause; which said demurrer is in the words and figures following, to wit:

Demurrer.

Circuit court of the United States for the western district of Wisconsin.

DE WITT C. LAWRENCE, CYRUS J. LAWRENCE, Darius W. Lawrence, William G. Wiley, and Waite Talcott, complainants,
against
GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. Hoyt, and A. Scott Sloan, defendants.
} In the seventh circuit.

The demurrer of George H. Paul, Joseph H. Osborn, John W. Hoyt, and A. Scott Sloan, to the bill of complaint of De Witt C. Lawrence, Cyrus J. Lawrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott, complainants.

These defendants respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur thereto, and for cause of demurrer show that the said complainants have not by their said bill made such a case as entitled them in a court of equity to any relief from or against these defendants or any or either of them touching the matters
100 contained in said bill or any such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants do demur to the said bill and to all the matters and things therein contained, and humbly pray the judgment of this honorable court whether they shall be compelled to make any other or further answer to the said bill, and they pray to be hence dismissed with their reasonable costs in this behalf sustained.

I certify that, in my opinion, the foregoing demurrers of George H. Paul, Joseph H. Osborn, John W. Hoyt, and A. Scott Sloan to the bill of complaint of De Witt C. Lawrence, Cyrus J. Lawrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott is well founded in law and proper to be filed in the above cause.

A. SCOTT SLOAN,
Attorney-General of the State of Wisconsin.

I. C. SLOAN, *of Counsel.*

UNITED STATES OF AMERICA,
Western District of Wisconsin:

John W. Hoyt, being duly sworn, does depose and say that he has read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

JOHN W. HOYT.

Subscribed and sworn to before me this 9th day of July, A. D. 1874.
F. M. STEWART, *Clerk.*

On this day, to wit, the 8th day of July, in the June term, A. D. 1874, of said court, in the records of the proceedings thereof in said entitled cause, before the honorable James C. Hopkins, judge, is the following entry:

101 *Decree.*

DE WITT C. LAWRENCE, CYRUS J. LAWRENCE, Darius W. Lawrence, William G. Wiley, and Waite Talcott,
vs.
GEORGE H. PAUL, JOSEPH H. OSBORN, JOHN W. Hoyt, A. Scott Sloan, and The Chicago and Northwestern Railway Company.
} In equity.

And now again came the said complainants by their solicitors, and also the defendants by their solicitors, and the said Chicago and Northwestern Railway Company having failed to plead, answer, or demur to said bill, the same is taken as confessed against said company; and the said George H. Paul, Joseph H. Osborn, John W. Hoyt, and A. Scott Sloan having filed their demurrer to said bill, and the said demurrer having come on for a'gument, and it being agreed by the solicitors for both complainants and defendants, that all question of law, whether of jurisdiction or otherwise, shall and may be raised and considered under said demurrer; and the court being now fully advised in the premises, it is hereby ordered and decreed that said demurrer be sustained, and the complainants not asking leave to amend the said bill, the same is dismissed at the cost of complainants, and this cause is stricken from the docket; whereupon said complainants pray an appeal; which is granted upon the complainants, or any one of them, executing a bond in the penal sum of one thousand dollars, with Alfred Keep as security. Said bond to be filed within sixty days.

J. C. HOPKINS, *Judge.*

And afterwards, on the 18th day of July, A. D. 1874, came the complainants by their solicitor, and filed their bond on appeal, as follows:

Bond on appeal.

102 Know all men by these presents that we, William G. Wiley, of the city of New York and State of New York, as principal, and Albert Keep, of the city of Chicago and State of Illinois, as surety, are held and firmly bound unto the Chicago and Northwestern Railway Company, George H. Paul, Joseph H. Osborn, John W. Hoyt, and A. Scott Sloan in the penal sum of one thousand dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this thirteenth day of July, A. D. 1874.

The condition of the above obligation is such that whereas, on the eighth day of July, A. D. 1874, a decree was rendered by the circuit court of the United States for the western district of Wisconsin, in the suit of De Witt C. Lawrence, Cyrus J. Lawrence, Darius W. Lawrence, William G. Wiley, and Waite Talcott, against The Chicago and Northwestern Railway, George A. Paul, Joseph H. Osborn, John W. Hoyt, and A. Scott Sloan, defendants, that the said complainants'

bill should be dismissed, and that the said defendants should recover of the said complainants, their costs in their defense in that behalf expended, from which decree of said court the said defendants then and there prayed an appeal to the Supreme Court of the United States, which appeal was allowed by said court upon the condition that the said complainants, or one of them, should enter into bond with Albert Keep as security, in the penal sum of one thousand dollars, conditioned as the law directs:

Now, if the said complainants shall prosecute their said appeal with effect and without delay, and shall pay the amount of said decree, and all costs that may be adjudged against them, in case the said decree shall be affirmed in the Supreme Court of the United States, then this bond to be void, otherwise in full force.

W'M G. WILEY. [SEAL.]
ALBERT KEEP. [SEAL.]

103 *Certificate to transcript.*

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. M. Stewart, clerk of the circuit court of the United States for the western district of Wisconsin, do hereby certify that I have compared the above and foregoing with the original records and proceedings in said cause now remaining on file and of record in my office, and that the same is a true and correct transcript therefrom; and also a true copy of the bond on appeal in said case.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at my office in the city of Madison, in said district, this 12th day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

[SEAL.]

F. M. STEWART,
Clerk of the Circuit Court of the United States
for the Western District of Wis.

(Indorsement on cover:) No. 482. De Witt C. Lawrence, C. J. Lawrence, D. W. Lawrence, W. G. Wiley, and Waite Talcott, appellants, vs. George H. Paul, Joseph H. Osborn, John W. Hoyt, A. Scott Sloan, and the Chicago and Northwestern Railroad Company. W. Wisconsin C. C. U. S. Filed 3rd September, 1874.

REC. 482—5

4-164

Supreme Court of the United States.

OCTOBER TERM, 1875.

WILLEM FREDERIC PIEK *Et Al.*,

vs.

THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY, GEORGE H. PAUL, *Et Al.*

Appeal from the Circuit Court of the United States for the Western District of Wisconsin.

C. B. LAWRENCE,

Of Counsel for Appellants.

CHICAGO, ILL.:
CHARLES E. SOUTHARD, PRINTER, 175 MONROE STREET.
1875.

Supreme Court of the United States.

OCTOBER TERM, 1875.

WILLEM FREDERIC PIEK *et al.*,
vs.
THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY,
GEORGE H. PAUL, *et al.*

Appeal from the Circuit Court of the U. S. for the Western District of Wisconsin.

STATEMENT OF THE CASE.

This record presents the question, whether an act of the Legislature of Wisconsin, approved March 11, 1874, entitled "An Act relating to Railroads, Express and Telegraph "Companies, in the State of Wisconsin," is a violation of the Constitution of the United States.

The act will be found in full on pages 34 to 40, of the original bill, and is printed as an appendix to this argument. It divides all the railroads of the State into three classes, and fixes the maximum rates of compensation for the transportation of passengers and freight to be charged by each class.

It also authorizes the Governor of the State to appoint three persons as Railroad Commissioners, who are clothed with a general authority over rates of freight. Every agent of a corporation who in behalf of such corporation charges a higher rate of freight than that allowed by the act is declared guilty of misdemeanor and subjected to a fine not exceeding two hundred dollars for each offense. Jurisdiction to impose the fine is conferred on Justices of the Peace.

Any person who is charged a rate of fare or freight exceeding the limits fixed by the act, may recover back from the company, or its agent, three times the amount of the overcharge.

The officers of the company are to be bound by the decision of the commissioners in regard to freights, and if they disregard such decision they are made liable to a fine of two hundred dollars for each offense.

The Chicago and North-Western Railway Company has been organized in its present shape by the consolidation of various railroad companies, incorporated by the States of Illinois, Wisconsin, Michigan, and Minnesota. It is the great channel of commerce from the city of Chicago through the Northwest, measuring with its branches more than sixteen hundred miles. It has, in its existing form as a consolidated road, issued its bonds to the amount of over forty millions of dollars, secured by a deed of trust upon its franchises and property. The money received upon these bonds has been used by the company in paying its old indebtedness and in completing and equipping its various lines of road.

At the July term, 1874, of the Circuit Court of the United States, for the Western District of Wisconsin, certain holders of the bonds thus issued by this Company, one of them, Willem Frederic Piek, a resident of Amsterdam, in Holland, and the others residents of New York, brought a bill in behalf of themselves and other bondholders, against the Railway Commissioners and the Attorney General of Wisconsin, the object of which was to enjoin them from the execution of said act in regard to the Chicago and North-Western Railroad. The bill sets forth the grant of public lands made by the Federal Government, to the State of Wisconsin, to aid in the construction of railroads in said State, approved June 3, 1856, the acceptance of said grant by the State, on the 3d of November, 1856, the incorporation of the Wisconsin and Superior Railroad Company, and the grant of a portion of said lands to said company.

The bill further shows the incorporation, by the Legislature of Wisconsin, of the Madison & Beloit Railroad Company, its subsequent change of name to the Rock River Valley Union Railroad Company, its consolidation on the 30th of March, 1855, with a corporation of the State of Illinois, called the Illinois & Wisconsin Railroad Company, by virtue of laws enacted respectively by the Legislatures of Wisconsin and Illinois, under which laws, the said consolidated corporations became the Chicago, St. Paul & Fond du Lac Railroad Company.

The bill further shows the consolidation with this Company, on the 5th of March, 1859, of the company first above named,

entitled the Wisconsin & Superior Railroad Company, said consolidated companies retaining the name of the Chicago, St. Paul & Fond du Lac Railroad Company. The bill further shows the sale of this railroad on the 2d of June, 1859, under certain trust deeds, that it was sold as one entire road extending from Chicago in Illinois to Fond du Lac in Wisconsin, and was on the second of June, 1859, conveyed by that description to the purchasers. The bill further shows the incorporation of said purchasers under the name of the Chicago and North-Western Railway Company on the 6th of June, 1859, under the authority of certain acts of the Legislatures of Wisconsin and Illinois, passed previous to said sale, by which it was provided, that in the event of a sale of said road under a deed of trust the purchasers should have the right to become a corporation by filing a certificate in the office of the Secretary of State, specifying the name of the corporation, and the names and number of the directors. The bill further shows the consolidation of this company, on the 2d of June, 1864, with another company in Illinois, called the Galena & Chicago Union Railroad Company, under the authority of both States, the said consolidated companies retaining the name of the Chicago and North-Western Railway Company. The bill further shows the issue, by this Company, on the 30th day of November, 1872, of bonds amounting to forty-eight millions of dollars, secured by deeds of trust upon its property executed to the Union Trust Company of New York, as trustee, said bonds being issued for the purpose of canceling all previous indebtedness of said company.

The bill further shows that the complainant, Willem Fred-

erick Piek, is the owner of bonds to the amount of $217,000, and that the complainants, Henry R. Pierson and Moses Taylor, are also the holders of large amounts of said bonds.

The bill further shows that the average of the dividends declared by the company, since the consolidation of the roads, in 1859, does not exceed, including stock dividends, seven and three-quarters per cent. on preferred stock, or three and three-quarters on common stock.

The bill further shows that the company had, up to the date of filing the bill, paid all its accrued interest on its bonds, but that since December, 1872, it has paid no dividends whatever to its stockholders on its common stock, and but three and one-half per cent. upon its preferred stock.

The bill further alleges that the rates of fare and freight as established by the company, are reasonable and just, and are in fact so low as not to produce an income sufficient to pay the legal rate of interest on the money actually invested by its stockholders, after paying operating expenses, costs of repair, and interest on its bonds.

The bill sets forth in full the act of the Wisconsin Legislature for the regulation of fares and freights first above stated, and alleges that under the rates of freight and fare prescribed by the act as maximum rates, the income of the road will not be sufficient to do more than pay the operating expenses and keep the road and its equipment in proper repair, and the company will be wholly unable to pay the interest upon its bonds.

The bill charges that said act is a violation of the Constitution of the State of Wisconsin, and that of the United States, both as to the rights of the stockholders and those of the bondholders.

The bill further charges that various prosecutions have been commenced under said law against agents of the company for charging greater rates of fare and freight than the rates prescribed by said act, under which prosecution said agents have been arrested and required to give bail.

The bill further alleges a request by the complainants to the railway company, to cause legal proceedings to be instituted in its name, for the purpose of protecting the rights of the bondholders against all attempts to enforce the act of March 7, 1874, and the refusal of the company to take any steps in the premises.

The bill makes the Railway Commissioners appointed under the act, and the Attorney-General of the State, parties defendant, and prays an injunction restraining them from prosecuting the agents of the company, or from executing the provisions of said act, as against the Chicago and North-Western Company.

The bill makes the Chicago and North-Western Railway Company a defendant, and asks that it may be enjoined from accepting said act.

The Farmers' Loan and Trust Company, and the Union Trust Company, corporations of the State of New York, and

trustees named in the deeds of trust executed by the company, also join in the bill as complainants.

The defendants filed a demurrer to the bill. The case was heard upon the demurrer, at the July term of the Circuit Court, 1874, and the bill was dismissed. From this decree, the complainants appealed.

The act of March 11, 1874, regulating the rates of fare and freight, is set out in full in the bill. All the other acts referred to in this argument are made exhibits to the bill, and set out in full.

ERRORS ASSIGNED.

1. The Circuit Court erred in holding that the said act of the Legislature of Wisconsin, passed March 11, 1874, entitled "An act relating to railroads, express and telegraph companies in the State of Wisconsin," was a valid law, and not a violation of the Constitution of the United States, or of the act of Congress granting lands to the State of Wisconsin, to aid in the construction of roads, bearing date June 3, A.D. 1856, or of the Constitution of Wisconsin.

2. The Circuit Court erred in holding that the Legislature of the State of Wisconsin could determine or appoint commissioners to determine the maximum rates to be charged by the Chicago and North-Western Railway Company for transporting passengers and freight.

3. The Circuit Court erred in dismissing the bill.

BRIEF OF THE ARGUMENT.

The power on the part of the State of Wisconsin to pass the act of March 11, 1874, regulating railway fares and freights is claimed under the 1st section of the 11th article of the Constitution of that State. The section reads as follows:

"Corporations, without banking powers or privileges, may "be formed under general laws, but shall not be created by "special act, exept for municipal purposes, and in cases where, "in the judgment of the Legislature, the objects of the cor- "poration cannot be obtained under general laws. All general "laws or special acts enacted under the provisions of this "section may be altered or repealed by the Legislature at any "time after their passage."

The power to pass the act in question is to be considered:

First, in reference to the rights of stockholders.

Secondly, in reference to the rights of bondholders.

Under the first head are to be considered:

1st. The rights which the Chicago and North-Western Railway Company possesses in common with all other railway corporations of Wisconsin, as against the enforcement of the act of March 11, 1874.

2d. The rights which the Chicago and North-Western Railway Company possesses which are peculiar to itself.

In the argument of this case we shall urge the following propositions:

I.

The act of the Wisconsin Legislature under consideration, regarded independently of the clause of the Wisconsin Constitution reserving the right to alter or repeal corporate charters, is a clear violation of that provision of the Federal Constitution which forbids a State to pass any law impairing the obligation of contracts.

AUTHORITIES:

Wilmington R. R. Co. *vs.* Reid, 13 Wallace, 266.

Pacific R. R. Co. *vs.* McGuire, 20 Wallace, 42.

Humphrey *vs.* Pigues, 16 Wallace, 247.

Attorney General *vs.* Chicago and North-Western Railway Company, Sept. Term, 1874, of Supreme Court of Wisconsin, in pamphlet.

II.

The clause of the Constitution of Wisconsin, reserving the right to alter or repeal corporate charters, is to be construed in connection with the other provision in the same Constitution forbidding the taking of private property for public use, except on due compensation, and in subordination to the 14th Amendment of the Federal Constitution, which provides that "no State "shall deprive any person of life, liberty or property without "due process of law:" and being thus construed, it follows that the Legislature of Wisconsin cannot, under the power to

alter or repeal a corporate charter, take from the stockholders of a corporation their charter, or their material property, without due compensation. This the act in question does.

AUTHORITIES:

Wynehamer *vs.* The People, 13 N. Y. 392.

Attorney General *vs.* C. & N.W. R. R. Co., Supreme Court of Wisconsin, August Term, 1874; in pamphlet.

Pumpelly *vs.* Green Bay Co., 13 Wallace, 466.

Green *vs.* Biddle, 8 Wheaton, 355.

III.

The right of a corporation or natural person to demand and receive a reasonable compensation for services rendered to others at their request is not a franchise, that is, a special privilege, derived from the bounty of the State, but a right resting on universal law. So long, therefore, as the State of Wisconsin permits a railway corporation to exist, that is, so long as its charter is not repealed, it can charge a reasonable compensation for the transportation of passengers and freight. The State cannot, by an alteration of its charter, compel it to render these services for less than a reasonable compensation, nor can it be compelled, by fine and imprisonment of its officers, to accept an amendment of the charter. If the State elects to repeal the charter, the stockholders would, after such repeal, own the road, and rolling stock as a partnership. Whether the State could prevent their operating the road as a partnership, is a question not necessary to be decided. We deny such power. But whether it exists or not, so long as the road is

operated, whether by the corporation or the stockholders as a partnership, those who operate it would have a right to demand a reasonable compensation for their services, which the State could not take away.

AUTHORITIES:

State Freight Tax, 15 Wallace, 233.
Von Hoffman *vs.* Quincy, 4 Wallace, 535.
Curran *vs.* State of Arkansas, 15 How., 304.
Beardstown *vs.* Louisville R. R. Co., 4 Met., (K'y), 308.
Sage *vs.* Dillard, 15 B. Monroe, 353.
Commonwealth *vs.* Express Co., 13 Gray, 253.
Miller *vs.* The State, 15 Wallace, 498.
Holyoke Co. *vs.* Lyman, 15 Wallace, 522.

IV.

If a company which transports goods at the request of the owner has a right to a reasonable compensation for its services, which the Legislature cannot take away, then the question of what is a reasonable compensation becomes a judicial question which can not be decided by the Legislature. Its determination belongs to the courts, where the company can justify its charges by proper evidence, and be heard in its own defense.

AUTHORITIES:

Commonwealth *vs.* Proprietors of Bridge, 2 Gray, 337.
Attorney General *vs.* C. & N. W. R. R. Co., Supreme Court of Wisconsin, August Term, 1874; opinion of Chief Justice Ryan in pamphlet.

P. W. &. B. R. R. Co. *vs.* Bower, March No. 1874, *Law Register.*

Chicago & Alton R. R. Co. *vs.* The People, 67 Illinois, 11.

State *vs.* Noyes, 47 Maine, 203.

Stamford *vs.* Pawlet, 1 Cromp. & Jervis, 57.

V.

Independently of the foregoing considerations, applicable to all railway companies in the State, the Chicago and North-Western Railway Company occupies a peculiar position, which places it beyond the reach of the legislative act under consideration, for two reasons:

1. The sale of the Chicago, St. Paul & Fond du Lac road, which is a part of the Chicago & North-Western road, in 1859, under a deed of trust and the authority of the Legislature, vested the title to the road in certain persons as purchasers, with a right to operate it, and their subsequent incorporation conferred no additional right in the road, and the alteration or repeal of the charter cannot impair the right to operate it, which they acquired by their purchase and held as natural persons.

2. The Legislature of Wisconsin has entered into a contract with a corporation of Illinois, by which the Illinois corporation has acquired rights in that road which the act in question impairs in violation of the 10th section of the 1st article of the Federal Constitution.

AUTHORITIES:

Coe *vs.* The Columbus, P. & Ind. R. R. Co., 10 Ohio, 386.
Atkinson *vs.* M. & C. R. R. Co., 15 Ohio, 36.
Curran *vs.* State of Arkansas, 15 Howard, 534.
Railway Co. *vs.* Wheaton, 13 Wallace, 284.
Morris Canal & Bank Co. *vs.* Townsend, 24 Barb., 658.

VI.

The act violates in principle the terms of the Congressional Land Grant of June 3, 1856, which required as one of the conditions of the grant, that the roads receiving its benefits should "remain public highways for the use of the Government "of the United States, free from tolls or other charges upon "the transportation of property or troops of the United "States," and that the mails should be transported at such prices as Congress might by law direct. If the Legislature of Wisconsin can pass such an act, it can fix a rate of compensation which will prevent the operation of the road or disable it from performing its duties to the General Government.

AUTHORITIES:

McCulloch *vs.* State of Maryland, 4 Wheat., 316.
Osborn *vs.* Bank of United States, 9 Wheat., 740.

VII.

The act in question violates the contract entered into between the corporation and its bondholders, which contract the

State had authorized, and thus violates the 10th section of the 1st article of the Federal Constitution, which forbids a State to pass a law impairing the obligation of contracts.

AUTHORITIES:

Tomlinson *vs.* Jesup, 15 Wall., 457.
Durfee *vs.* Old Colony, 5 Allen, 247.
Curran *vs.* State of Arkansas, 15 Howard, 304.
Baring *vs.* Dabney, 19 Wallace, 8.
Von Hoffman *vs.* City of Quincy, 4 Wallace, 458.
Woodruff *vs.* Trapnall, 10 Howard, 190.
Hawthorn *vs.* Calef, 2 Wallace, 10.

VIII.

The act in question is a regulation of inter-state commerce, and for that reason unconstitutional.

AUTHORITY.

15 Wallace, 232.

IX.

The jurisdiction of the Court in cases of this character is settled.

AUTHORITIES:

Dodge *vs.* Woolsey, 18 How., 331.
U. S. Bank *vs.* Osborne, 9 Wheat., 738.

ARGUMENT.

I.

THE ACT OF THE WISCONSIN LEGISLATURE UNDER CONSIDERATION, REGARDED INDEPENDENTLY OF THE CLAUSE OF THE WISCONSIN CONSTITUTION, RESERVING THE RIGHT TO ALTER OR REPEAL CORPORATE CHARTERS, IS A PLAIN VIOLATION OF THAT PROVISION OF THE FEDERAL CONSTITUTION WHICH FORBIDS A STATE TO PASS ANY LAW IMPAIRING THE OBLIGATION OF CONTRACTS.

We shall take it for granted, in the present argument, that this Court does not consider there is any thing in the character of railway charters which withdraws them from the operation of the rule laid down in Dartmouth College *vs.* Woodward, 4 Wheat., 515, and so often since announced.

The case of Wilmington R. R. Co. *vs.* Reid, 13 Wallace, 266, Humphrey *vs* Pigues, 16 *ib.* 247, and Pacific R. R. Co. *vs.* Maguire, 20 Wallace, 42, are decisive of this point. If the question can be considered an open one in this Court, we have said in regard to it all we desire to say, in an argument filed at the present term, in the case of The Winona & St. Peter R. R. Company *vs.* Blake, which brings before this Court the railway legislation of Minnesota.

II.

THE CLAUSE IN THE CONSTITUTION OF WISCONSIN RESERVING THE RIGHT TO ALTER OR REPEAL CORPORATE CHARTERS, IS

TO BE CONSTRUED IN CONNECTION WITH THE OTHER CLAUSE OF THE SAME CONSTITUTION, FORBIDDING THE TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, EXCEPT ON DUE COMPENSATION, AND IN SUBORDINATION TO THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION, WHICH PROVIDES THAT "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW;" AND BEING THUS CONSTRUED, IT FOLLOWS THAT THE LEGISLATURE OF WISCONSIN CAN NOT, UNDER THE POWER TO ALTER OR REPEAL A CORPORATE CHARTER, TAKE FROM THE STOCKHOLDERS OF A CORPORATION THEIR CHARTER OR THEIR MATERIAL RIGHTS WITHOUT DUE COMPENSATION.

The provision in the Constitution of Wisconsin, reserving to the Legislature power over corporate charters, was undoubtedly inserted in that instrument for the purpose of securing to the State the same control over persons aggregated into corporations that it could exercise over them in their natural capacity. It was apprehended that under the decision of the Dartmouth College case, corporations, by relying on their charters as contracts, could not only perpetuate their existence, even though such existence should be prejudicial to the State, but under chartered rights unwisely granted, escape the obligation of laws binding upon all other persons.

The Constitution of Wisconsin was adopted in convention on the 1st of February, 1848. At the December term of this Court, in 1847, the case of West River Bridge Company *vs.* Dix, 6 Howard, 507, was argued. It was then, for the first time, decided by this tribunal that a franchise held under a State charter could be condemned for public use on making due compensation. The contrary position was urged by Mr.

ARGUMENT.

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TO BE CONSTRUED IN CONNECTION WITH THE OTHER CLAUSE OF THE SAME CONSTITUTION, FORBIDDING THE TAKING OF PRIVATE PROPERTY FOR PUBLIC USE, EXCEPT ON DUE COMPENSATION, AND IN SUBORDINATION TO THE FOURTEENTH AMENDMENT OF THE FEDERAL CONSTITUTION, WHICH PROVIDES THAT "NO STATE SHALL DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW;" AND BEING THUS CONSTRUED, IT FOLLOWS THAT THE LEGISLATURE OF WISCONSIN CAN NOT, UNDER THE POWER TO ALTER OR REPEAL A CORPORATE CHARTER, TAKE FROM THE STOCKHOLDERS OF A CORPORATION THEIR CHARTER OR THEIR MATERIAL PROPERTY, WITHOUT DUE COMPENSATION. This the act in question does

The provision in the Constitution of Wisconsin, reserving to the Legislature power over corporate charters, was undoubtedly inserted in that instrument for the purpose of securing to the State the same control over persons aggregated into corporations that it could exercise over them in their natural capacity. It was apprehended that under the decision of the Dartmouth College case, corporations, by relying on their charters as contracts, could not only perpetuate their existence, even though such existence should be prejudicial to the State, but under chartered rights unwisely granted, escape the obligation of laws binding upon all other persons.

The Constitution of Wisconsin was adopted in convention on the 1st of February, 1848. At the December term of this Court, in 1847, the case of West River Bridge Company *vs.* Dix, 6 Howard, 507, was argued. It was then, for the first time, decided by this tribunal that a franchise held under a State charter could be condemned for public use on making due compensation. The contrary position was urged by Mr.

Webster and Judge Collamer in argument, and the Court, in deciding the case, speaking through Mr. Justice Daniel, says the opinion "seems to have obtained that the right of prop-"erty in a chartered corporation was more sacred and intan-"gible than the same right could possibly be in the person of "the citizen."

Mr. Justice Wayne dissented from the decision altogether. Mr. Justice McLean held the property of a corporation could be condemned, but not its franchise. Mr. Justice Woodbury intimated if a charter contained an express provision that it should not be taken for public use, it could not be condemned.

The Constitution of Wisconsin must have been framed before this opinion was published, and probably before it was pronounced, and the case shows that at that time it was supposed corporate franchises could not be condemned for public use, even by making due compensation. In that case, it was held they could be condemned, but it was admitted they could not be taken, even with compensation, except for public use, under the power of eminent domain.

It was to remedy the supposed immunity of corporations from a just subordination to the necessities of the State, that this clause was inserted in the Constitution of Wisconsin. It was to prevent an *imperium in imperio.*

Unless we are prepared to attribute to the framers of that Constitution the most unworthy motives, we cannot suppose they designed to subject the stockholders of corporations to mere legislative caprice, uncontrolled by the constitutional

safeguards which they placed around the property of all other persons. It is morally impossible that they intended to abandon corporate rights and property to legislative spoliation, whenever popular prejudice and passion should rule the hour. They can have intended nothing more than to leave the stockholders in corporations in such a position that the Legislature could place them on the same footing with natural persons before the law, and disable them from permanently evading the burdens imposed on all others engaged in similar vocations, by appealing to the letter of their charter. Their object was not to open a door to oppression, but to secure simple equality between citizens of the State, whether working singly or in corporate associations. They did not intend, by this provision, to enable the Legislature to overturn the most sacred rights of property which they so carefully guarded by other clauses of the same Constitution, merely because such rights were corporate in their character. They did not intend to authorize a species of legislation wholly inconsistent with the principles and objects of all our American constitutions, and of all good government everywhere.

In the same instrument which reserves to the Legislature the right to alter or repeal corporate charters, is another clause which says: "The property of no person shall be taken "for public use, without just compensation therefor."

But the franchise of a railway corporation is property, and often of great value. When the convention of Wisconsin was framing its Constitution, it was commonly supposed, as was stated by this Court in the case above cited, that a corporate

franchise could not be taken by the State, even by paying for it its full value. Therefore the convention provided that all corporate charters to be thereafter granted, might be modified or wholly taken away at the pleasure of the State. But at the same time they said no property shall be taken by the State, except on just compensation. Did they then, mean that franchises upon the faith of which millions might have been expended should be thenceforth subject to resumption by the State without compensation? Did they intend any thing further than that the State, should have the right to take back all corporate charters thereafter to be granted, but to take them in the same way that the State would take other property, namely, by making due compensation to the owners.

The charter, and the franchises it secures, are the property of the stockholders. They are property in the strictest sense of the word.

The Constitution says they may be taken back by the State. It also says no property shall be taken by the State except by paying its value—which is simply saying that the State shall not rob its citizens. The State determines to take back a charter and the franchises it secures. Must it not then pay to the owner the value of what it takes?

This Court, however, seems in two cases to have taken a different view as to the right to compensation where a charter was merely modified under a reserved power to do so, and as that question is in no way important in this case I do not press it. I refer to Sherman *vs.* Smith, 1 Black, 587, and

Tomlinson *vs.* Jessup, 15 Wallace, 454. In the first case, the general banking law of the State of New York had provided that no stockholder should be individually liable for the debts of the corporation. There was a power reserved to the Legislature to repeal or alter the law. Under this power the Legislature subsequently passed an act creating individual liability on the part of the stockholders as to the debts to be thereafter contracted. This act was sustained by this Court.

The other case presented this question: The Legislature of South Carolina, having chartered a railway company in 1851, by an act passed in 1855, relieved it from taxation. In 1868, a new Constitution was adopted which required that the property of all corporations should be subject to taxation. The charter of the company was subject to the provisions of a general law, in force when the charter was granted, reserving the right of repeal or alteration. This Court held that under the new Constitution the property was taxable.

While, therefore, these cases may be held to deny a right to compensation, when it is only a naked franchise that is resumed by the State, they do not touch the question of such right, when the State, by an alteration of the charter, seizes the material property of the corporation or its income. In the first of these cases the State, in amending the charter, was simply making the creditors of the banks more secure. In the second it merely terminated an unjust exemption from taxation which had been granted to the corporation years after its creation as a mere gratuity or bounty.

In neither case, did the State take away a right of property

existing under the general law, but merely repealed certain unjust exemptions from the general law resting upon special legislative grant. It was merely placing the corporations, in regard to the subject matter of the legislation, in the position of natural persons.

Whatever may be the right of the State in regard to *franchises* under this clause of the Constitution, there is no room for doubt, and very little for argument, as to the extent of the power which it may exercise over the material property of the corporation.

It has reserved a right to repeal or alter the charters it may grant. This means, and only means, that it may take back or modify the franchises which it gives. It does not mean that it may take what it has not given, or may control the use of what it has not given, in any larger degree than it could take the same property or control its use, in the hands of natural persons.

A railroad company owns its franchises, its road-bed, and its rolling stock. Its franchises it derived from the State. Its road-bed and rolling stock came from the money of its stockholders, or of the persons who bought the bonds issued by the corporation. The charter which gave the franchises, the State may alter or repeal.

It may take back what it gave, whether without compensation is immaterial as to this branch of the argument.

But neither the road-bed nor the rolling stock can be taken by the State, nor the income derived from their use, without making just compensation to their owners.

This is forbidden, not only by the Constitution of Wisconsin, but by the 14th Amendment of the Federal Constitution, which says "nor shall any State deprive any person of life, liberty "or property without due process of law." It is not necessary to discuss in this Court the meaning of the phrase, "due "process of law" as used in this amendment. Almost every Court in the Union has had occasion to define it, and they speak with an unvarying voice. It is universally conceded, that under the safeguard of these venerable words, all private property is safe against legislative aggression.

While the meaning of this clause is familiar to all lawyers, the language of Mr. Justice Selden, in *Wynehamer vs. The People*, 13 *N. Y.*, 392, is so pertinent to the present case, in connection with this clause, that we beg leave to quote it, as follows:

"No doubt, it seems to me, can be admitted of the meaning "of these provisions. To say, as has been suggested, that "'the law of the land,' or 'due process of law,' may mean "the very act of legislation which deprives the citizen of his "rights, privileges or property, leads to a simple absurdity. "The Constitution would then mean, that no person shall be "deprived of his property or rights unless the Legislature "shall pass a law to effectuate the wrong, and this would be "throwing the restraint entirely away. The true interpreta-"tion of these constitutional phrases is, that where rights are

"acquired by the citizen under the existing law, there is no "power in any branch of the Government to take them away; "but where they are held contrary to the existing law, or are "forfeited by its violation, then they may be taken from "him—not by an act of the Legislature, but in the due "administration of the law itself, before the judicial tribunals "of the State. The cause or occasion for depriving the citi- "zen of his supposed rights must be found in the law as it is, "or at least, it can not be *created* by a legislative act which "aims at their destruction. Where rights of property are "admitted to exist, the Legislature can not say they shall "exist no longer; nor will it make any difference, although a "process and a tribunal are appointed to execute the sentence. "If this is the 'law of the land' and 'due process of law,' "within the meaning of the Constitution, then the Legislature "is omnipotent. It may, under the same interpretation, pass "a law to take away liberty or life without a pre-existing "cause, appointing judicial and executive agencies to execute "its will. Property is placed by the Constitution in the same "category with liberty and life."

We respectfully submit, no legal proposition could well be clearer than that the State of Wisconsin is restrained by this Fourteenth Amendment, if in no other way, from enacting a law which, under pretense of altering the charter, takes from a railway corporation any portion of its material property. Indeed, this is admitted by the Supreme Court of Wisconsin.

In August, 1874, the Attorney General of the State applied to the Supreme Court of the State for a writ of injunction to

restrain the Chicago and North-Western R. R. Company from operating their road except upon the terms prescribed by the act in regard to rates, now under consideration. The case was argued, and the Supreme Court, in awarding the injunction, gave, through the learned Chief Justice Ryan, a long and elaborate opinion. It is written with much ability, but I think I may say, without impropriety or disrespect to the learned Chief Justice, that it betrays throughout a sentiment of antagonism towards corporations. Nevertheless, the opinion says (page 33 of the pamphlet):

"*The material property and rights* of corporations should "be inviolate as they are here; but it comports with the dig- "nity and safety of the State that the *franchises* of corpora- "tions should be subject to the power which grants them, "that corporations should exist as the subordinates of the "State, which is their creator *durante bene placito.*" (The italics are ours.)

So, too, on page 36 of the opinion, the Court says: "Their "rights in their material property are inviolate, and shall "never be violated with the sanction of this Court."

We must respectfully express our surprise that the Supreme Court of Wisconsin, having conceded this, should have proceeded to award the injunction. The Court says, "the mate- "rial property and rights of corporations should be inviolate "as they are here." Does the law under consideration leave the material property and rights of corporations inviolate? The phrase sounds like judicial mockery. Does a legislative act which prescribes the rent I am to receive for my house,

leave my "material property" "inviolate?" Does an act which prescribes that the public shall have a right to travel on all stage coaches within the State of Wisconsin, at the rate of one mill per mile, leave the "property and rights" of the owners of a line of stage coaches inviolate? If the Legislature can limit the price which I am to charge for the use of my property, and compel me to take a less sum than I would receive but for such interference, it does in substance take the property itself. The Constitution which would only protect me in my naked legal title, and not in the use or income, would be but a miserable delusion, "keeping the word of "promise to the ear, but breaking it to the hope."

But our system of constitutional law is chargeable with no such wretched sophistry. On this question, this Court has expressed itself in no uncertain tones. In the case of Pumpelly *vs.* Green Bay Company, 13 Wallace, 166, this Court, through Mr. Justice Miller, used the following language:

"It would be a very curious and unsatisfactory result, if, "in construing a provision of constitutional law, always under- "stood to have been adopted for protection and security to the "rights of the individual as against the Government, and "which has received the commendation of jurists, statesmen "and commentators, as placing the just principles of the com- "mon law on that subject beyond the power of ordinary legis- "lation to control them, it shall be held that, if the Government "refrains from the absolute conversion of real property to the "uses of the public, it can destroy its value entirely—can "inflict irreparable and permanent injury to any extent—

"can, in effect, subject it to total destruction, because, in the "narrowest sense of that word, it is not *taken* for public use. "Such a construction would pervert the constitutional provi- "sion into a restriction upon the rights of the citizen, as "those rights stood at the common law, instead of the Govern- "ment, and make it an authority for the invasion of private "right, under the pretext of the public good, which had no "warrant in the laws or practices of our ancestors."

In the celebrated case of Green vs. Biddle, 8 Wheaton, 355, this Court said:

"Nothing, in short, can be more clear, upon principles of "law and reason, than that a law which denies to the owner "of land a remedy to recover the possession of it, when with- "held by any person, however innocently he may have "obtained it; or to recover the profits received from it by "the occupant; or which clogs his recovery of such possession "and profits by conditions and restrictions tending to diminish "the value and amount of the thing recovered, impairs his "right to and interest in the property. If there be no "remedy to recover the possession, the law necessarily pre- "sumes a want of right to it. If the remedy afforded be "qualified and restrained by conditions of any kind, the right "of the owner may indeed subsist, and be acknowledged, but "it is impaired, and rendered insecure, according to the nature "and extent of such restrictions. A right to land essentially "implies a right to the profits accruing from it, since without "the latter the former can be of no value. Thus, a devise of "the profits of land, or even a grant of them, will pass a right

"to the land itself. Shep. Touch., 93; Co., Litt., 4. 'For "'what,' says Lord Coke, in this page, 'is the land but the "'profits thereof?'"

It is clear from these cases, if authority were needed, that the Legislature can no more take the income of railway property than it can take the property itself. Yet that is precisely what this legislation does. It takes, for the public use, a certain portion of the income of every railroad in the State, and in doing this asserts the right to take the whole. Indeed the right to take the whole was boldly and logically claimed in the argument of the case below, and we were told that railway corporations must have confidence in the justice and magnanimity of the Legislature. We reply in the memorable words of Chief Justice Marshall, used in answer to a similar argument as to the taxation of the United States Bank by States, "this is not a case of confidence."

McCulloch *vs.* State of Maryland, 4 Wheaton, 431.

It is plain there is no substantial difference between an act of the Legislature which reduces the income of a railroad company thirty per cent., by reducing its tariff, and one which requires it, at the end of the year, to pay over thirty per cent. of its income to the State to be distributed *pro rata* among all those who have paid the company freight or fare. Both acts would be for the supposed benefit of the public, and both would take, in the name of the public, a portion of the income of the road. The only difference is as to the mode. In the one case, the company is compelled to give up a portion of its earnings to the State; in the other, it is prevented

from collecting them. In the one case, the State divides with the company at the end of the year; in the other, it indirectly divides every day. It is difficult to see how one of these acts would be void and not the other.

It is stated in the bill that the tariff for carrying passengers, and freight, prescribed by this act, would only produce a sufficient income to pay the expense of operating the road and keeping it in proper repair, leaving nothing to meet the interest on its debt, and of course nothing for payment of a dividend to the stockholders. These allegations of the bill are sustained by the affidavits of experienced railway managers. Even if these allegations are not true, it is too plain for argument that the principle asserted in this act, and upon which it must stand or fall without reference to its details, is the *right* of the Legislature to fix any arbitrary rates it may choose, even though insufficient for paying the operating expenses of the road, and to punish by fine and imprisonment the officers of the road if they disobey.

The learned Chief Justice of the Supreme Court of Wisconsin asserts, it is "a singular perversion of terms" to say that the provisions of this act amount to a confiscation, and he proceeds to define what a technical confiscation is.

This criticism upon such a characterization of the law is a curious instance of the *haeret in cortice*, as to the use of a term.

Notwithstanding the criticism of the learned Chief Justice, we can not use a more euphemistic expression. We must still venture the assertion, that the principle asserted in this act is,

the right of confiscation by the State, to the use of the public, of all railway property. This Court said, in regard to an act of the State of Missouri, that it was "either the imposition of a tax, or an act of highhanded violence; an act which, if "committed by an individual, would amount to robbery." Pacific R. R. Co. vs. Maguire, 20 Wallace, 42. There are some legislative acts of which counsel and courts may speak with Saxon plainness.

III.

THE RIGHT OF A CORPORATION OR A NATURAL PERSON TO DEMAND AND RECEIVE A REASONABLE COMPENSATION FOR SERVICES RENDERED TO OTHERS AT THEIR REQUEST, IS NOT A FRANCHISE—THAT IS, A SPECIAL PRIVILEGE DERIVED PROM THE BOUNTY OF THE STATE, BUT A RIGHT RESTING ON UNIVERSAL LAW. SO LONG, THEREFORE, AS THE STATE OF WISCONSIN PERMITS A RAILWAY CORPORATION TO EXIST—THAT IS, SO LONG AS ITS CHARTER IS NOT REPEALED—IT CAN CHARGE A REASONABLE COMPENSATION FOR THE TRANSPORTATION OF PASSENGERS AND FREIGHT. THE STATE CAN NOT, BY AN ALTERATION OF ITS CHARTER, COMPEL IT TO RENDER THESE SERVICES FOR LESS THAN A REASONABLE COMPENSATION; NOR CAN IT BE COMPELLED, BY FINE AND IMPRISONMENT OF ITS OFFICERS, TO ACCEPT AN AMENDMENT OF THE CHARTER. IF THE STATE ELECTS TO REPEAL THE CHARTER, THE STOCK HOLDERS WOULD, AFTER SUCH REPEAL, OWN THE ROAD AND ROLLING STOCK AS A PARTNERSHIP. WHETHER THE STATE COULD PREVENT THEIR OPERATING THE ROAD AS A PARTNERSHIP, IS A QUESTION NOT NECESSARY TO BE DECIDED. WE

DENY SUCH POWER. BUT WHETHER IT EXISTS OR NOT, SO LONG AS THE ROAD IS OPERATED, WHETHER BY THE CORPORATION OR BY THE STOCKHOLDERS AS A PARTNERSHIP, THOSE WHO OPERATE IT HAVE A RIGHT TO DEMAND A REASONABLE COMPENSATION FOR THEIR SERVICES, WHICH THE STATE CAN NOT TAKE AWAY.

The essential franchises of a railway corporation are its right to build a road and ply the vocation of a common carrier thereon in a corporate capacity, to exercise the right of eminent domain, and to construct the road across highways and rivers.

The right to demand a reasonable compensation for services rendered by it as a common carrier, although frequently called a franchise to take tolls, when there has been no occasion to define its precise character with accuracy, is not properly a franchise, nor is the compensation charged properly a toll. The right is only a franchise in the sense that it is an act performed by a corporation whose existence is a franchise.

It is not a right derived from the charter in any other sense than that the corporation was created by the charter.

Being once created, it possesses this right by the general law of the land.

This position was laid down by this Court, in the case of the State Freight Tax, 15 Wall., 233, in which the following language was used:

"We concede the right and power of the State to tax the "franchises of its corporations, and the right of the owners of

"artificial highways, whether such owners be the State or "the grantees of franchises from the State, *to exact what they* "*please for the use of their ways. That right is an attribute* "*of ownership.*"

To say that a railway corporation, in demanding compensation for carrying goods or passengers, is exercising a right which rests upon legislative grant, is an entire misapprehension of the nature of a franchise. A franchise is a special privilege, not belonging to the community at large, and given by the sovereign power. The right given to a combination of natural persons, to do business as a corporation, is, therefore, a franchise. The power of condemning land under the right of eminent domain is a franchise. But the right of a corporation to demand payment for services rendered by it, at the request of another person, is not, in any proper sense, a franchise. A corporation, in paying a debt, necessarily does so in its corporate capacity; and therefore, in loose language, such as we sometimes find in the books, it may be said, in paying it, to be exercising a corporate right or franchise. Yet, it is certainly not exercising a right or franchise derived from its charter. Municipal corporations are under the control of the Legislature. Their charters may be taken away or amended at legislative discretion. Yet, this Court held, in Von Hoffman vs. Quincy, 4 Wall., 535, that an act of the Legislature of Illinois, which amended the charter of the city of Quincy, by limiting its power to levy taxes, was void, when it was shown that the result of the act would incapacitate the city to pay its debts. This decision did not proceed upon the ground that the right to pay its debts was a

corporate franchise of the city, because the corporation was municipal, and its franchises were under legislative control; but upon the ground that the payment of debts was a duty arising under the general law of the land in regard to the obligation of contracts, from which the Legislature could not relieve the city by amending its charter.

Now, the right of a corporation to pay a debt is no more a right existing independently of a legislative grant of such power, than is the right of a corporation to receive payment of a debt due to it for services it has rendered.

If the Legislature of Wisconsin charters a corporation for the purpose of sawing lumber, the right of the corporation to charge a reasonable compensation for its services would not be a franchise derived from the charter or dependent upon its existence. If the charter should be taken away this right would survive and belong to the corporators as joint owners of the mill and machinery.

If another corporation is created for the purpose of transporting this lumber and other productions of the State to market, does its right to a reasonable compensation for its services depend any more upon its charter, or is it any more a franchise than in the case of the mill owners?

A confusion of ideas naturally arises in regard to this matter from the frequent use of the term "tolls" as applied to railway corporations. Their charges are not "tolls" in any proper sense of that term. That word has come into

common use, in regard to railways, because it was used in regard to turnpikes and canals. As to them the word is properly applied but there is no analogy between their tolls, and the compensation received by railway companies for their services as common carriers. A railway corporation does not charge other persons for permission to send their own vehicles over the road. It charges for carrying them or their goods in vehicles which the corporation owns, and for which it furnishes the motive power, and for its responsibilities as a common carrier. This is not toll. It is a charge for personal services rendered by employees of the company, using the property of the company.

It is possible that counsel for defendant in error may cite the case of Perine *vs.* Chesapeake & Deleware Canal Co., 9 Howard, 177, as bearing upon this question; but, in fact, there is no analogy. In that case, the three States of Maryland, Delaware and Pennsylvania had united in granting a charter to a company organized to construct a canal connecting the waters of the Chesapeake and Delaware bays. The charter provided that the canal should "forever thereafter be esteemed and taken to be navigable as a public highway, free for the transportation of all goods, commodities, or produce whatsoever, on payment of the toll imposed by this act." The charter also specified the precise sum which the company might charge as toll upon the various articles of commerce, and upon vessels carrying no freight; but gave no additional toll upon vessels simply because of the passengers on board. The question before the Court was, whether the company could charge toll on account of passengers, beyond the toll demandable upon vessels carrying freight,

or upon empty vessels? The Court held, as a matter of construction of the charter, that the corporation could charge no tolls upon passengers, three Judges dissenting.

There is no analogy between that case and the one at bar. A canal is simply an artificial river, on which all persons can send their own vessels, subject only to the payment of the tolls at the locks. The company owning the canal is not a common carrier. It transports neither goods nor passengers. It simply furnishes a water-course, which, by the charter in the case in 9th Howard, was declared free to all the world, upon the payment of the tolls specified with minute particularity in the act. In accepting the charter, the company agreed to charge no more than the amount therein specified. The company was to be paid at that rate for having constructed a water-course open to all comers. This was strictly toll. It was fixed by charter, and the Court decided that no toll could be charged except in the cases enumerated by the charter, because the charter provided that the canal was to be free to all persons "on payment of the toll imposed by this act."

What has been said of the case in 9th Howard is true of the case of Stonebridge Canal Co. *vs.* Wheely, 2 Bard. & Ad., 793, which may be cited by opposing counsel. There the act of Parliament, or charter of the company, provided that the canal should be free to all persons to navigate, subject to the payment of certain tolls on passing the locks; and the Court held, as a construction of the charter, that Parliament did not intend toll should be charged against boats not passing a lock. This was on the ground that, by the charter, the right was

reserved to the public to navigate the canal free of toll, except at the locks; and the Court seems to concede, that if the public had no such right by the charter the company might insist on compensation. There are several English cases of the same character, in which the decision involves simply a construction of the charter.

If we are correct in the view we have taken, that the charging a reasonable compensation for the rendition of personal services and the use of the corporate property is not a special privilege or franchise, but the exercise of a right existing by universal law, it then follows that no repeal or alteration of the charter can take that right away.

If a charter grants the privilege to the corporation of charging whatever rates it may deem proper, that would be a special privilege, because natural persons exercising the vocation of a common carrier cannot do that.

They can only charge a reasonable compensation.

The privilege, then, of charging whatever rates it may deem proper, is a franchise which may be taken away under the reserved power, but the right to charge a reasonable compensation would remain as a right under the general law governing natural persons, and not as a special franchise or privilege.

The effect of the alteration or repeal of a charter can be made clearer by supposing the case of a corporation of simpler character than a railway company, a corporation for example created for the manufacture of cloth. Suppose the charter of

such a corporation to be repealed. The doctrine that on the death of a corporation the corporate property vests in the State has never been the law of this country, and is not now the law of England. This doctrine was repudiated by this Court in the case of Curran *vs.* State of Arkansas, 15 Howard, 304, and now the rights of stockholders in the property of a dissolved corporation can no more be seized by the State, than can their title to property belonging to them as individuals.

What then would be the effect of the *repeal* of such a charter? The right of conducting their business as a corporation, with the limited liability resulting therefrom, would be gone, because it was a special privilege resting in legislative grant. But nothing more. The material property would remain, and would belong to the stockholders as co-partners in proportion to the amount of their respective shares of stock, subject of course to the claims of creditors. The right to continue the business would remain, because the manufacture of cloth is a lawful business under the general laws of the land, as is the business of a common carrier.

The stockholders, by the dissolution of the corporation, are simply remitted to their rights under the general law.

What can the State accomplish by an *alteration* of the charter? The State could modify what it had given. It could introduce the principle of individual liability. It could change the mode of transacting corporate business as established by the general law. But it could not impair the right of the corporation to use its mill and machinery for the manufacture of cloth, any more than it could take that right away. The

greater includes the less, and the State could not destroy the value of the property under pretense of altering the charter, if it could not do so by an absolute repeal.

It could not compel the corporation to pay a price fixed by the Legislature for the wool or fuel it might require. It could not fix the wages of the employees. It could not determine the prices at which the manufactured cloth should be sold. And why? Because the right to use the mill and machinery for the manufacture of cloth, and to sell the cloth for what it will bring in the market, are rights pertaining to the ownership of the property, and which cannot be separated from it until our present systems of government are destroyed, and our constitutional guaranties are overthrown.

If the Legislature were to seek to enforce the acceptance of such alterations of the charter, and enforce obedience to them by fine and imprisonment of the corporators as the Wisconsin act has done, there is not a court in the country that would hesitate to pronounce the invalidity of such an act.

It may be claimed that a railway corporation differs from one for manufacturing purposes in this: that a railway can not be built except by the authority of the State.

But this only arises from the necessity of crossing public highways and rivers. If a person owns a tract of land ten miles square, and intersected by no highway, he certainly can construct a railroad on it and transport persons and property from one border of his land to the other, by means of a

locomotive and cars as well as by horses and wagons, and can hold himself out to the public as a common carrier to that extent.

In Redfield on Railways, a different opinion is expressed, but the Court of Appeals of Kentucky in the case of Beardstown & Louisville R. R. Co. *vs.* Metcalf, 4 Metc., 208, referring to the passage in Redfield, uses the following language:

"Possibly these passages were not designed to mean more "than this: a road can not be made over the lands of unwilling "proprietors except under authority from the State; and the "State, in order to encourage internal improvements, may grant "to a corporation or individual the exclusive right to build a "road between two points. In the absence of any positive "law upon the subject, our opinion is that an individual has "as much right to build a railroad over his own land, or the "land of others, with their consent, as he has to build a stage or "a wagon; and as much right to use the former as the latter "in carrying freight and passengers for pay."

This is simple common sense.

So, also, in the case of Beardsley *vs.* The Ontario Bank, 31 Barb., 635, the Court said:

"Aside from the right of eminent domain—which, to a cer- "tain extent, and to enable them to acquire the title to real "property, is delegated to railroad corporations—I think of "no privilege enjoyed by them which might not be exercised

"by individuals without express permission from the Govern-
"ment. The carriage of persons and property by railway is
"a business open to all who can acquire title to the roadway,
"and construct and equip the road; and the fact that a rail-
"road, for the purposes to which they are applied, is deemed
"to be so far public, or for public purposes, as to justify the
"delegation of this right of acquiring property upon making
"just compensation to the owner, without his consent, does
"not affect the character of the property which a railroad
"company may acquire."

We have assumed, in our argument, that the Legislature has no right to determine the wages of labor or the price of commodities, in regard to natural persons. That proposition is one which this Court will hardly care to have argued. The absence of legislative power to fix the price of labor or goods, rests upon the same constitutional principles which forbid the Legislature to transfer property from one person to another, or to reduce one person under the subjection of another, or to take property for the State, except with due compensation.

It is sometimes said that the regulation by cities of the charges of hackmen is an exercise of this power, the existence of which we deny. But this is a mistaken view. Hackmen require the use of the streets as a standing place for their carriages. The city, in the exercise of its police power, grants them this right, and issues the required license. But one of the terms is, that they shall submit to the regulations of the city as to prices. They accept the license subject to

the condition upon which it is granted There is, therefore, no analogy between this power and that under discussion.

So, too, it is sometimes said that the State regulates turnpike and ferry tolls. But this power is always reserved, expressly or by implication, either in the special act creating the franchise, or by some general law in force when the franchise is granted, and controlling its exercise. We have not been able to find a case in which this power has been exercised of which the assertion just made is not true.

It is sometimes said that the tolls of mills are regulated by statute. This can only be done where millers are authorized to overflow neighboring lands in securing the necessary water power—a common species of legislation before the days of steam—and the general law authorizing the overflow fixes, or reserves the right to fix, the tolls. But if a person erects a steam mill on his own land, and offers to grind wheat for the public, there is in this country no legislative power to fix his tolls.

These are the only cases which occur to us of the exercise of legislative power over prices, and they stand on ground peculiar to themselves. The idea that the Legislature has a general power of that character is at war with every principle of free government, and with all those provisions of our American Constitution which were designed to protect the natural rights of men against legislative aggression.

It may be also said that while the company continues to operate the road as a corporation, it must accept the terms prescribed

by the State, and if it desires to charge reasonable rates of fare and freight, independently of the statute, by virtue of its ownership of the property, it must surrender its charter and cease to operate the road as a corporation. But the fallacy of this argument is palpable. The company, in charging reasonable rates, is only exercising a right belonging to the stockholders under the general law by virtue of ownership of the property. This right is an absolute constitutional right not dependent on the will of the Legislature. If the State chooses to take away its franchise as a corporation, because it does not conform its rates to the requisition of the Legislature, it may do so, but it must leave to the company all its property, with the right to use it for the purposes for which it was created, that is as a line of railway, or it must make due compensation for the property whose value is taken away. As we have already said, it can not compel a railway corporation, by fining or imprisoning its officers, to accept an amendment of its charter, nor can it compel the corporation to voluntarily relinquish its charter. The right of acceptance or refusal is a right which the corporation must necessarily possess—the State, having the correlative right of taking such measures as the Constitution may allow, if the proposed amendment is refused.

This right on the part of the corporation seems to be questioned by the Supreme Court of Wisconsin, in the opinion already cited, but with all due respect to that Court, the right must exist from the very nature of a private corporation. Natural persons can not be compelled to become a private corporation against their will. Charters are contracts which

must be assented to as well by the party taking as by the party giving.

The same must be true of an amendment, which is an additional contract.

The corporation can refuse its assent. If it does, the Legislature, under the reserved power, can repeal. But the stockholders of a corporation must certainly have the right to elect between the repeal of their charter, and accepting an amendment that would make the charter a source of certain and constant loss.

Suppose the Legislature were to require railway corporations to carry passengers at one cent per mile in first-class cars, and freight at the rate of one cent per ton for every mile. The power to do this is asserted by this act and by counsel. Obedience to such an act would bankrupt railways in a month. Is it true, under our American Constitutions, that the officers and agents of a corporation can be fined and imprisoned because the stockholders decline to accept such an amendment? Is it true that corporations can be compelled to operate their road under such a law by writs of mandamus or injunction, and imprisonment for contempt, if the officers still decline to accept the amendment, by running at the old rates? Have not the stockholders the poor privilege of saying to the State:

"Repeal your franchise if you wish, but you can not fine "us, you can not imprison our agents, you can not confiscate "our property, merely because we decline to accept an amend- "ment that would involve us in certain ruin. Not until you

"can fix the price at which the farmer shall sell his corn, the "merchant his goods, or the mechanic his wares, can you "practice this tyranny towards us."

Under a similar reservation of power the Court of Appeals in Kentucky used the following language in Sage *vs.* Dillard, 15 B. Monroe, 353, in regard to the right to accept or reject an amendment:

"The reservation of the right to alter, amend, or repeal the "act by which this corporation was created is certainly prudent, "and salutary; but it seems to be a necessary implication that, "if the Legislature should undertake to make what in their "opinion is a legitimate alteration or amendment, the trustees "have the power to accept or reject it, whatever may be the "consequences. If, from maladministration or otherwise, "the Legislature should, at any time, deem it expedient "to put the institute out of existence, by a repeal of "its charter, they have the unquestionable power to do "so, but they have, in our opinion, no right or power "to compel the trustees to *accept* any act which they may "pass, although, in their estimation, it may comport with the "power reserved. Indeed, we perceive but little, if any, "utility in a reservation of power to alter or amend, when it "strikes us as axiomatic, that the Legislature can impose no "alteration or amendment upon the trustees without their "consent, either with or without the reservation. The Legis- "lature can no more force the trustees to *accept* an alteration "or amendment of their charter, than they could have forced "them to *accept* the original charter. Under the reservation,

"they can repeal or destroy, without any consent on the part "the trusteees; but so long as they remain in existence as a "corporate body, they necessarily have the power to reject an "amendment. What might be the consequences of the rejection "of a lawful amendment it is unnecessary for us to consider."

Under this head of the argument it will be proper to ask the attention of the Court to what has been said by this and other courts, in regard to the principle to be applied to the construction of a clause in a charter reserving the power of alteration or repeal.

In all the adjudged cases in which a provision of this charter has been under consideration, it has been held that there are necessary limits to the power of alteration, and among the limitations is this, that the State can not, under this power, entirely change the character of the corporation, or defeat its purpose. A legislative act, which takes the substantial control of the property of a corporation from the stockholders, and vests it in agents of the State, is not, therefore, an act within the reserved power of alteration.

The case of Sage *vs.* Dillard, cited above, was as follows: The Legislature of Kentucky had incorporated the Western Baptist Theological Institute, in 1840, with seven trustees, by name, reserving the power to amend the charter. In 1841, an act was passed, authorizing the trustees to increase their number to thirteen, which amendment was accepted. In 1845 another amendment to the charter was passed, authorizing the trustees to increase their number to thirty-six, which was also

accepted. In 1848 a third amendment was passed, appointing sixteen trustees in addition to the number then in office, (which was twenty-one), which amendment a majority of the trustees in office refused to accept, and would not permit the sixteen to act with them. The question was brought before the courts, and the Court of Appeals held that the power which the Legislature sought to exercise was not within the reservation of the charter.

In giving their opinion the Court used the following language: "In our opinion the act of the Legislature creating "sixteen new trustees without the consent of the board, is not "an act coming within the scope and meaning of the power "reserved in the act. As it seems to us, the passage of this "act was not so much the exercise of a legislative function, as "it was the exercise of the ministerial functions, pertaining "particularly to the board of trustees. It is an act not changing "or amending the mode or manner in which the trustees, to "whom has been given, by the founders of the charity, the "supervision and visitorial power of the institute, may exercise "their power, but it is an act by which this supervision and "visitorial power is substantially taken away, and conferred "upon others. True, the Legislature may, by virtue of the "reservation, repeal or destroy; but the power to destroy does "not imply a right to cripple or maim. It is said that in "the case of Allen *vs.* McKean, 1 Sumner, 277, which in-"volved a question similar to the one under consideration, "Justice Story, in commenting upon the reserved power of the "Legislature to limit, amend or restrain the power vested by "the act, uses the following language:

"'The language of that section is certainly very broad, but "'it is not unlimited. The founder has a right to have the "'statutes of his foundation, as to the power of trustees, strictly "'adhered to, except so far as he has consented to any altera- "'tion of them. Bnt an authority to alter or modify these "'powers can never be fairly construed into an authority to "'take them away from his trustees, and confer the same powers "'on other persons,' and such is our conclusion in this case."

In the case of the Commonwealth *vs.* Essex Company, 13 Gray, 253, the question arose whether the Legislature could impose upon a chartered company the obligation of making new fishways around a dam, when a former amendment of the charter, which had been accepted by the company, exempted it from such obligation in consideration of its indemnifying all persons damnified. The company had paid considerable money as indemnity, when the new amendment of its charter was passed. There was a reserved power to alter or repeal.

The Court held the new amendment not obligatory, and the opinion given by Chief Justice Shaw, has the following in reference to the reserved power:

"It seems to us that this power must have some limit, though "it is difficult to define it. Suppose an authority has been "given by law to a railroad corporation to purchase a lot of "land, for purposes connected with its business; and they "purchased such lot from a third party; could the Legislature "prohibit the company from holding it? If so, in whom "should it vest; or could the Legislature direct it to revest "in the grantor, or escheat to the public; or how otherwise?

"Suppose a manufacturing company, incorporated, is author-
"ized to erect a dam and flow a tract of meadow, and the owners
"claim gross damages which are assessed and paid; can the
"Legislature afterwards alter the act of incorporation so as to
"give to such meadow owners future annual damages? Per-
"haps from these extreme cases—for extreme cases are allow-
"able to test a legal principle—the rule to be extracted is
"this: that where, under power in a charter, rights have been
"acquired and become vested, no amendment or alteration of
"the charter can take away the property or rights which have
"become vested under a legitimate exercise of the powers
"granted."

In the case of Holyoke Co. *vs.* Lyman, 15 Wallace, 500, the principles above announced by Chief Justice Shaw were substantially approved, although under the different facts of that case the Holyoke Company was required to construct new fishways. The Court in that case said:

"Charters subsequently granted must be understood as
"standing just as they would if that reservation of the power
"to amend, alter or repeal the same had been incorporated
"into each charter. Power to legislate, founded upon such
"a reservation, is certainly not without limit, but it may
"safely be affirmed that it reserves to the Legislature the
"authority to make any alteration or amendment in a charter
"granted subject to it, that will not defeat or substantially im-
"pair the object of the grant, or any rights which have vested
"under it, which the Legislature may deem necessary to secure
"either the object of the grant or any other public right not
"expressly granted away by the charter."

In Miller *vs.* The State, 15 Wallace, 498, this Court, through Mr. Justice Clifford, expresses itself as follows:

"Power to legislate founded upon such a reservation in a "charter to a private corporation is certainly not without "limit, and it may well be admitted that it can not be exer- "cised to take away or destroy rights acquired by virtue of "such a charter, and which, by a legitimate use of the powers "granted, have become vested in the corporation, but it may "be safely affirmed that the reserved power may be exercised, "and to almost any extent, to carry into effect the original "purpose of the grant, or to secure the due administration of "its affairs, so as to protect the rights of stockholders and of "creditors, and for the proper disposition of the assets. Such "a reservation, it is held, will not warrant the Legislature in "passing laws to change the control of an institution from "one religious sect to another, or to divert the fund of the "donors to any new use inconsistent with the intent and "purpose of the charter, or to compel subscribers to the stock "whose subscription is conditional to waive any of the condi- "tions of their contract."

Tried by the principles laid down in the above cases, the act of the Wisconsin Legislature must fall. The most vital element in the ownership of railway property and in the management of the affairs of a railway corporation, is the right to classify the various kinds of freight and determine what would be a proper compensation for the transportation of the different classes. To do this properly, both for the interests of the public and the corporation, evidently requires a large experience and the exercise of the soundest judgment.

The act in question takes these vital powers from the corporation and vests them in the State. In brief, it changes the whole character of the corporation by converting it substantially from a private to a public corporation—from a busines controlled by the persons who have invested their capital in it, to one controlled by the State. Nay, the change is even more objectionable than this. By this act the State takes the powers of the corporation without assuming its duties. It leaves to it the burden of paying the interest upon its bonds, and yet takes away the means of payment. If the interest is unpaid, the road may be sold. The corporation must prevent this, if possible, and may be obliged to assess its stockholders, while the State, that is the public, appropriates the income which should go to the creditors. We submit, if the State takes control of the means of revenue, it should, at the same time, provide the means of paying the interest on the bonds.

IV.

IF A COMPANY WHICH TRANSPORTS GOODS AT THE REQUEST OF THE OWNER HAS A RIGHT TO A REASONABLE COMPENSATION FOR ITS SERVICES, WHICH THE LEGISLATURE CAN NOT TAKE AWAY, THEN THE QUESTION OF WHAT IS A REASONABLE COMPENSATION BECOMES A JUDICIAL QUESTION WHICH CAN NOT BE DECIDED BY THE LEGISLATURE. ITS DETERMINATION BELONGS TO THE COURTS, WHERE THE COMPANY CAN JUSTIFY ITS CHARGES BY PROPER EVIDENCE, AND BE HEARD IN ITS OWN DEFENSE.

We have had occasion to present this proposition to the Court in the case of the Winona & St. Peter R. R. Co. *vs.* Blake, now pending in this Court, and we beg leave to repeat here what was said in our argument in that case:

This proposition seems so plain as hardly to admit of denial. What would be a reasonable rate of freight is a question to be answered only by an inquiry into many facts. The elements which enter into the determination of the question are also constantly changing. What is reasonable to-day may be far otherwise in six months from to-day. The price of labor, the cost of fuel, the amount of business, the condition of the currency—all these, and many other things, enter into the question of reasonableness or unreasonableness. The cost of the road is certainly an important factor in the problem, since the stockholders are entitled to some return on their investment. One road may have cost $30,000 a mile and another $50,000. One may have abundant fuel along its line, another may be obliged to use coal that has been brought hundreds of miles. That the Legislature should undertake to determine all these questions in advance, and by an unbending rule applicable to all roads and under all circumstances, is an absurdity. The question to be decided is one vitally affecting the property of the corporation, and certainly it has the right to be heard before it is despoiled. It was to secure a hearing before property can be taken, and a hearing in an impartial court of justice administering the general law, that our ancesters inserted in Magna Charta that famous safeguard as to trial by jury and due process of law, which we have been so careful to preserve in our American Constitutions.

That the determination of what is a reasonable compensation is a judicial question, is decided by the Court of Appeals of Delaware, in the case which we have already several times cited, from the March number, 1874, of the *Law Register*.

We quote the following:

"The Attorney General, who appeared on behalf of the "State, put, in the strongest possible form, the argument in "support of this act, as an exercise of internal regulation, by "insisting that there must, at all times, inhere in the Legis- "lature an authority to protect the public against extortionate "charges and unjust discriminations by carriers exercising a "public employment, and that to this power railroad corpora- "tions, as well as other common carriers, must be held "amenable. That the Legislature possesses the general power "here claimed for it, is not doubted; but the real question "still remains, viz: In what mode may such power be con- "stitutionally exercised, at least over corporations? The "answer is, that the Legislature may, by general laws, forbid "extortion and unjust discriminations on the part of common "carriers, as it may prohibit any other offense against social "order or the general welfare. It was not disputed, in the "argument, that, for the breach of such laws, corporations as "well as natural persons, may be held liable; but such lia- "bility would be enforced by a judicial proceeding, in which "the alleged extortionate or unjustly discriminating character "of the charges drawn into question would be judicially "ascertained. Such remedies against common carriers already "exist at the common law, and to these, as well as to the

"common law liabilities of common carriers generally, incor-
"porated carriers, as well as natural persons, are subject by
"the public nature of their employment. Very different,
"however, from such a mode of regulation by general laws,
"with a liability to judicial remedy, is the attempt by a
"Legislature to prescribe in advance a law of charges for
"carriers—to do which is, in effect, to take out of their
"hands the management of their own business."

The case of The Commonwealth *vs.* Proprietors of New Bedford Bridge, 2 Gray, 339, is also directly in point.

In that case, the charter of the bridge company required it to construct in the bridge "two suitable draws, which shall "be at least thirty feet wide." A subsequent act of the Legislature required the company to construct a draw not less than sixty feet wide, and in a manner to be approved by a commissioner to be appointed by the Governor. The company declined to obey the act, insisting that it was unconstitutional; and the question was brought before the courts. It was contended for the State that the Legislature could determine what was a "suitable draw," as it is now contended that the Legislature of Minnesota may determine what is a "reasonable compensation." The opinion of the Court upon this point is so clear and conclusive, that we will give a considerable extract from it, commencing on page 349:

"But it is urged—and this constitutes the stress of the "argument on this part of the case—that the use of the term "'suitable' in the act incorporating the defendants, as applied

"to the construction of the draws, being a term in its nature "indefinite and uncertain, did not fix and absolutely settle "the duty and obligation of the defendants in this particular; "that these, with the exception of the minimum width of the "draw, were thereby left open and undetermined: and by "necessary implication the Legislature have the right reserved "to them of regulating, from time to time, the construction "of the draws, and of prescribing what shall be suitable, as "respects their location, materials and dimensions. But we "can not yield to the force of this argument. It is founded "on an entire misapprehension of the relations of the parties, "as created by the act of incorporation. They are but parties "to a contract. Each has equal rights and privileges under "it, and neither can interpret its terms authoritatively, so as "to control and bind the rights of the other. The Common- "wealth has no more power or authority to construe the "charter, than the corporation. By becoming a party to a "contract with its citizens, the Government divests itself of "its sovereignty, with respect to the terms and conditions of "the compact, and its construction and interpretation, and "stands in the same position as a private individual. If it "were otherwise, the rights of parties contracting with the "Government would be held at the caprice of the sovereign, "and exposed to all the risks arising from the corrupt or "ill-judged use of misguided power. The interpretation and "construction of contracts, when drawn in question between "the parties, belongs exclusively to the judicial department "of the Government. The Legislature have no more power "to construe their own contracts with their citizens than "those which individuals make with each other. They can

"do neither without exercising judicial power, which would "be contrary to the elementary principles of our Govern- "ment, as set forth in the Declaration of Rights, article 30. "No better illustration of the dangerous consequences which "would follow from a different doctrine could be had than is "afforded by the case at bar. If the Legislature have the "power to decide upon the true meaning of the terms of the "contract, and to determine what shall be deemed suitable "in the construction of the bridge and draws, there can be "no limit placed upon the exercise of this power. If they "have the right to prescribe a draw of sixty feet in width, "they may hereafter require the defendants to extend it to "one hundred feet, or to build it across the entire space "between the shore and the adjacent island. So, too, in "regard to the construction of the bridge itself. The act of "incorporation required that it should 'be well built, at least "'twenty-four feet wide, of good and suitable materials.' By "parity of reasoning, it would be competent for the Legisla- "ture to enact that the bridge should be rebuilt one hundred "feet in width, and be constructed of iron. In a word, the "argument leads directly to the conclusion that the Legisla- "ture have the power to annex new and onerous conditions "to the contract at their pleasure, and thus effectually destroy "the value of the franchise granted to the defendants. Such "a doctrine can not be maintained without overthrowing all "the salutary and well established principles applicable to "this species of contract between the Government and its "citizens. For these reasons, we are of opinion that the act "of 1851, c. 318, *ex proprio vigore*, has no binding force upon "the defendants, and that this indictment can not be sustained

"against them upon proof of a neglect and refusal to comply "with its requisitions." * * * * *

"Whether the defendants have, in fact, complied with the "terms of their charter, by constructing their draws in a "suitable manner, so as not unreasonably or unnecessarily to "obstruct or impede public navigation, is a question which "neither the Legislature nor the defendants can determine "absolutely, without the consent of the other, when it is "drawn in question between the defendants and the Common-"wealth. Like all other matters involving a controversy "concerning public duty and private right, it is to be adjusted "and settled in the regular tribunals where questions of law "and fact are adjudicated on fixed and established principles, "and according to the forms and usages best adapted to "secure the impartial administration of justice."

The same question was adjudged by the Supreme Court of Illinois, in the case of The Chicago & Alton R. R. Co. *vs.* The People, 67 Ills., 11.

The act before the Court, in that case, was intended to impose a fine upon any railway guilty of unjust discrimination, and it made the fact that a railway company charged a larger sum for carrying freight any distance than it charged for carrying the same quantity and kind of freight a greater or the same distance, though on another portion of the road, conclusive evidence of unjust discrimination. The Court held the act void, on the ground that all discriminations were not necessarily unjust, and whether they were, in any given case, reasonable and proper, was a judicial question upon

which the railway companies had a right to be heard and to take the verdict of a jury. In giving the opinion the Court used the following language:

"But the act itself goes further. It forbids any discrim-
"ination, whatever, under any circumstances, and whether
"just or unjust, in the charges for transporting the same
"classes of freight over equal distances, even though moving
"in opposite directions, and does not permit the companies to
"show that the discrimination is not unjust."

"The mere proof of the discrimination makes out a case
"against the railway companies, which they are not allowed to
"meet by evidence showing the reason or propriety of the
"discrimination, and then, upon this sort of ex-parte trial,
"the act imposes as a penalty for the offense a forfeiture of
"the franchise, which might be equivalent to a fine of millions
"of dollars. The object of the law is commendable, but such
"a proceeding, to be followed by such a penalty for the first
"offense, can not be sustained. It could only have been au-
"thorized through the inadvertence of the Legislature. The
"law, as it now stands, makes an offense out of an act which
"might be shown not to be an offense, but an exercise of a
"wise discretion, really beneficial to the people of the State,
"and while debarring the companies from all right of explan-
"ation, confiscates their franchises upon the first conviction.
"The Legislature can not raise a conclusive presumption of
"guilt against a natural person, from an act that may be inno-
"cent in itself, taking from him the privilege of showing the

"actual innocence or propriety of the act, and confiscating "his property as a penalty for the supposed offense."

"Those provisions of our Constitution which forbid the "deprivation of life, liberty or property, except by due pro- "cess of law, and which guarantee the right of trial by jury, "as heretofore enjoyed, and the right in all criminal prosecu- "tions to appear and defend in person and by counsel, would "all be violated by such a law. Those provisions, it is true, "are designed to apply only to natural persons; but artificial "persons must be permitted to invoke the spirit of justice "which prompted them, so far as may be necessary to protect "their property and franchises against the operation of a law "that substantially condemns without a trial."

In the case of Stamford *vs.* Pawlet, 1 Crompton & Jervis, 57, a question was before the Court of Exchequer, as to the right of a corporation to take reasonable tolls. The Court, after deciding in favor of the right, makes the following remarks which are very germane to the point now under consideration:

"We also think the observation that to permit a grantee to "take whatever may appear to him to be a reasonable toll, is "to make a grantee a judge for himself, and to expose the "subject to extortion, has received a satisfactory answer. The "grantee demands it at his peril, and at the hazard of a pri- "vate, as well as a public prosecution—of a private at the "suit of the party injured; of a public at the suit of the "Attorney General, in the name of his Majesty.

"The inconvenience of raising such questions can not be "avoided by specifying the sum. The King can not grant an "unreasonable toll; and it is competent to every subject of "the realm, from whom the toll is demanded, to question its "being reasonable, even when the exact sum is specified in "the charter."

"This question may always be brought under discussion in "whatever terms the grant may be expressed."

In the case already referred to, which was brought by the Attorney General before the Supreme Court of Wisconsin, at its August term, 1874, to enforce obedience to this act, the Court held that the original charter for a part of the road operated by the Milwaukee & St. Paul Company was granted and accepted before the adoption of the State Constitution, and did not fall under the reserved power. The Court therefore held that the charter gave a right to reasonable tolls, which was not affected by the law—the question of what was reasonable being a judicial question. We quote the following from the opinion of Mr. Chief Justice Ryan, page 40 of pamphlet:

"We are of opinion that the franchise is not one vesting in "the corporation an absolute right of exacting whatever tolls "it might see fit. The Courts have authority to limit the "right to reasonable tolls—to tolls reasonable, not in the arbi-"trary judgment of the corporation, but in fact.

"That is, indeed, as against a great railroad company, not

"a very effective remedy. But the law gives the remedy to "all aggrieved by the exaction of unreasonable tolls. The "question here, however, is not what the courts can do to "control the exercise, but what the Legislature can do, by "statute, to limit the right of a franchise so broad that it "seems to invite extortion.

"We have already sustained the power of the Legislature "to limit rates of toll of railroads, subject to legislative con- "trol. But that power rests on the authority of the Legisla- "ture, not on the reasonable rate of tolls fixed. And the "restraint of a franchise to take reasonable tolls—to tolls "reasonable in fact—is a judicial, not legislative function.

"But the right of the corporation here to take tolls, at dis- "cretion, being thus fixed by express franchise in their char- "ter, there seems to us to be no room for doubt that, viewing "the charter as a contract, the franchise is a positive grant "to take tolls in the manner and to the extent prescribed by "it, subject to such judicial construction and control as it "may bear, and is a vital part of the contract of the charter "within the authorities.

V.

INDEPENDENTLY OF THE FOREGOING CONSIDERATIONS, APPLICABLE TO ALL RAILWAY COMPANIES IN THE STATE, THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY OCCUPIES

new name. The Legislature of Illinois passed a similar act in regard to the Illinois and Wisconsin company. (Exhibit 7, of bill.)

By virtue of these two acts the companies consolidated, and took the name of the Chicago, St. Paul and Fond du Lac Railroad Company. This consolidated company issued bonds, and executed a mortgage. In 1859 the Legislatures of Wisconsin and Illinois passed each an act providing that, if this road should be sold, the purchasers might incorporate themselves by filing a certificate in the office of the Secretary of State, specifying the name of the new corporation, and the number and names of the directors. (Exhibits 8 and 9 of bill.)

The road was sold at Janesville, in Wisconsin, on the 2d of June, 1859.

There was not a separate sale of the portion situated in each State, but a sale of the consolidated road, as one road, extending from Chicago, in Illinois, to Fond du Lac, in Wisconsin. The purchasers, four days after the sale, incorporated themselves, by virtue of the acts above referred to, under the name of the Chicago and North-Western Railway Company.

These facts appear in the bill.

The purchasers of the Chicago, St. Paul and Fond du Lac road were, then, from the 2d to the 6th of June, 1859, the owners, as natural persons, of the road-bed, the rolling stock, and the right to operate the road as common carriers, and necessarily to charge a reasonable compensation for services

thus rendered. Was that right subject to be taken away or modified by the Legislature, except in the same way and to the same degree that natural persons exercising the vocation of a common carrier could be controlled? Clearly not. The 11th article of the Constitution of Wisconsin, which reserves power over charters, is as follows:

"Corporations without banking powers or privileges may "be formed under general laws, but shall not be created by "special act, except for municipal purposes, and cases where, in "the judgment of the Legislature, the objects of the corporation "can not be obtained under general laws. All general laws, "or special acts enacted under the provisions of this section, "may be altered or repealed by the Legislature at any time "after their passage."

It will be observed that this clause does not reserve power to the State to repeal or alter all *franchises*. It simply reserves the power to repeal or alter all general or special laws by which *corporations* shall be created. A franchise granted to a natural person, or to several natural persons, to be exercised by them in their natural capacity, would be, when accepted and acted upon by them, a contract with the State, which the Legislature could neither repeal nor modify by virtue of its reserved powers over charters of incorporation. Such a contract would be protected by the provision of the Federal Constitution.

On the 14th day of March, 1859, as already stated, the Legislature of Wisconsin passed an act, authorizing the

new name. The Legislature of Illinois passed a similar act in regard to the Illinois and Wisconsin company. (Exhibit 7, of bill.)

By virtue of these two acts the companies consolidated, and took the name of the Chicago, St. Paul and Fond du Lac Railroad Company. This consolidated company issued bonds, and executed a mortgage. In 1859 the Legislatures of Wisconsin and Illinois passed each an act providing that, if this road should be sold, the purchasers might incorporate themselves by filing a certificate in the office of the Secretary of State, specifying the name of the new corporation, and the number and names of the directors. (Exhibits 8 and 9 of bill.)

The road was sold at Janesville, in Wisconsin, on the 2d of June, 1859.

There was not a separate sale of the portion situated in each State, but a sale of the consolidated road, as one road, extending from Chicago, in Illinois, to Fond du Lac, in Wisconsin. The purchasers, four days after the sale, incorporated themselves, by virtue of the acts above referred to, under the name of the Chicago and North-Western Railway Company.

These facts appear in the bill.

The purchasers of the Chicago, St. Paul and Fond du Lac road were, then, from the 2d to the 6th of June, 1859, the owners, as natural persons, of the road-bed, the rolling stock, and the right to operate the road as common carriers, and necessarily to charge a reasonable compensation for services

thus rendered. Was that right subject to be taken away or modified by the Legislature, except in the same way and to the same degree that natural persons exercising the vocation of a common carrier could be controlled? Clearly not. The 11th article of the Constitution of Wisconsin, which reserves power over charters, is as follows:

"Corporations without banking powers or privileges may "be formed under general laws, but shall not be created by "special act, except for municipal purposes, and cases where, in "the judgment of the Legislature, the objects of the corporation "can not be obtained under general laws. All general laws, "or special acts enacted under the provisions of this section, "may be altered or repealed by the Legislature at any time "after their passage."

It will be observed that this clause does not reserve power to the State to repeal or alter all *franchises*. It simply reserves the power to repeal or alter all general or special laws by which *corporations* shall be created. A franchise granted to a natural person, or to several natural persons, to be exercised by them in their natural capacity, would be, when accepted and acted upon by them, a contract with the State, which the Legislature could neither repeal nor modify by virtue of its reserved powers over charters of incorporation. Such a contract would be protected by the provision of the Federal Constitution.

On the 14th day of March, 1859, as already stated, the Legislature of Wisconsin passed an act, authorizing the

persons who should become the purchasers of the Chicago, St. Paul and Fond du Lac road, at the anticipated sale under the deed of trust, to become incorporated, by filing a certificate with the Secretary of State, setting forth the name of the new incorporation and the number and names of the directors. But it was not made obligatory upon the purchasers to become a corporation. It was left entirely optional with them. Suppose they had not done so. They could have continued to operate the road as natural persons. The State could not have prevented it, because it had authorized and even invited them to buy the road. Having done that, it could not have forbidden them to use it. If such a case had arisen, this Court would have said the State had entered into an implied contract with those purchasers that, if they would buy the road, they should have the right to operate it either as natural persons or as a corporation, as they might elect. The State retained its constitutional right to repeal or alter the charter of the Chicago, St. Paul and Fond du Lac Company, which still had a legal existence, but that would not have affected the right of the purchasers of the road, as natural persons, to operate it, with the inseparable right to demand a reasonable compensation for the services rendered as common carriers. This right would have inhered in the ownership and use of the property, and would also have existed under the implied contract with the State, growing out of the sale under the authority of the State, and the purchase on the faith of such authority.

With this right, then, vested in the purchasers of this road —a right indefeasible by the State—what was the effect of their

becoming incorporated in conformity with the act of March 14, 1859? (Exhibit 8 of the bill.) They received no charter of incorporation granting or defining their franchises. What did they do to become incorporated? They simply filed a certificate with the Secretary of State, "specifying the name "of the said corporation, the number of the directors, and the "names of the directors for the first year." This is the language of the act. What did they acquire by the act of incorporation? Only a corporate name, and the right to operate the road in a corporate capacity. This was all. What, then, can the State take away under the reserved power to *repeal* charters? It can take away the corporate name, and the right to do business in a corporate capacity. There would then remain the right to operate the road as natural persons. What can the State do, under the power to *alter?* It can alter the name assumed by the corporation, and alter the law of corporate business, or the rules of law by which corporations are governed. But beyond that the State can not affect this corporation under the power of altering and repealing charters, because there is nothing in the charter of this corporation, as then granted beyond a name, and the power of doing business in a corporate capacity. Perhaps other grants of power have since been made that may be resumed, but we are speaking of what was given to the purchasers of the road when they became a corporation, and of what would remain if they should cease to be a corporation.

As we have said, during the four days that the purchasers under the deed of trust held this road—namely, from the 2nd of June, 1859, when they bought it, to the 6th of June, 1859,

when they filed their certificate of incorporation—they owned the road and rolling stock as natural persons. They also, by their purchase, acquired the right to operate the road. When a railroad is sold under a deed of trust, conveying the property and franchises, and executed by authority of the Legislature, the property and all the franchises necessary to its use pass to the purchasers. But the franchise of being a corporation does not pass. The original corporation remains in existence. It has lost its property, and the franchises belonging to the property; but its own existence remains. The franchise of being a corporation belongs to the *stockholders*, and not to the corporation, and that is not sold. But the franchises belonging to the corporation, as such, have passed to the purchasers, so far as may be necessary for operating the road.

In the case of Coe *vs.* The Columbus, Piqua and Ind. R. R. Co., 10 Ohio, 386, the effect of such a sale is very elaborately discussed, and the Court says:

"After an act of disposition, which separates the franchise "to maintain a railroad and make profit from its use, from the "franchise of being a corporation, though a judgment of dis- "solution may be authorized, yet, until there be such judg- "ment, the rights of the corporators, and of third persons, "may require that the corporation be considered as still exist- "ing. When that judgment is had, those rights would be "protected."

The Court, in its opinion, also quotes the following language, as used by Curtis J., in Hall *vs.* The Sullivan R. R. Co., 22 *Law Reporter*, 138:

"The franchise to be a corporation is, therefore, not a sub-"ject of sale and transfer, unless the law, by some positive "provision, has made it so, and pointed out the modes in "which such sale and transfer may be effected. But the "franchise to build, own and manage a railroad, and to take "tolls thereon, are not necessarily corporate rights. They are "capable of existing in, and being enjoyed by, natural persons, "and there is nothing in their nature inconsistent with their "being assignable."

In the case of Atkinson *vs.* The M. & C. R. R. Co., 15 Ohio, 36, the Court, in speaking of a railway company whose property and franchise had been sold under a mortgage, used this language:

"Although it may be divested of its property, together "with the franchise of operating and making profit from the "use of its road, its corporate existence survives the wreck, "and endures until the state sees fit to terminate it by a proper "proceeding."

In this case the Court held that a special act, passed prior to the sale of the road, which provided that the charter should go to the purchasers, was really inoperative for that purpose, because it was creating a new corporation by a special act, which was forbidden by the Constitution.

It is clear, from these authorities, that the purchasers, at the sale on the 2d of June, 1859, did not acquire the charter. The deed of trust, under which the sale had been made, conveyed only the property and franchises, and that was all the

law authorized the company to convey. The franchises belonging to the corporation, so far as necessary to operate the road, passed by the sale. The franchise of being a corporation, which did not belong to the corporation, but to the stockholders, did not pass. The purchasers then held the road as natural persons, with such franchises as were necessary to its operation, and under the act of the Wisconsin Legislature above cited, which invited them to buy, an implied contract had arisen between the State on the one side, and the purchasers and their successors on the other, that they might hold, own and use this road for its proper purposes, with the same rights they would have had if they had originally built it as natural persons; in which event there would have been no pretense that the State could exercise, in regard to them, a species of legislative power existing only by virtue of the reservation in the Constitution, and existing only in regard to the charters of *corporations*.

That an implied contract, to the effect we have stated, arose between the State and the purchasers at the sale, is well illustrated by a very important case, decided by this Court. Curran *vs.* State of Arkansas, 15 Howard, 534.

The State of Arkansas had incorporated a State bank, in which it was itself the owner of all the stock. The bank was therefore a public corporation. The bank became insolvent, and the State having sold its own bonds to create the capital of the bank, and claiming therefore, to be a creditor, undertook, by an act of the Legislature, to appropriate all the assets of the bank to itself. A private creditor filed his bill to reach the assets, and this Court, through Mr. Justice Curtis, thus

spoke in reference to the implied contract, arising between the State and the creditors of the bank, as to the proceeds of the sale of the State bonds, which had formed the capital of the bank.

"The bank received this money from the State as the fund "to meet its engagements with third persons, which the State, "by the charter, expressly authorized it to make for the profit "of the State. Having thus set apart this fund in the hands "of the bank, and invited the public to give credit to it, "under an assurance that it had been placed there for the "purpose of paying the liabilities of the bank, whenever such "credit was given, a contract between the State and the cred- "itor not to withdraw that fund, to his injury, at once arose. "That the charter, followed by the deposit of the capital stock, "amounted to an assurance, held out to the public by the "State, that any one who should trust the bank might rely on "that capital for payment, we can not doubt. And when a "third person acted on this assurance, and parted with his "property on the faith of it, the transaction had all the ele- "ments of a binding contract, and the State could not with- "draw the fund, or any part of it, without impairing its obli- "gation."

In that case this Court would not permit the State to violate a contract implied from the circumstances. Certainly the implication in favor of the purchasers of the road, and against the State, in the present case, is far stronger. The State invited purchasers to buy a railway, the continued operation of which was of great importance to the State. Certain

persons bought the road, and brought it into successful operation, and thereby added millions to the value of property in the State. The State can not now take from the purchasers the benefit of the purchase; and when it seeks to do so, it violates the Constitution of the United States, not less than did the act of the State of Arkansas.

2. There is another view which we submit is decisive against the application of this act to the Chicago and North-Western Railway Company. It is this:

The power to pass this act rests solely upon the provision in the Wisconsin Constitution, authorizing the Legislature to create corporations, and to repeal or alter all general or special laws creating them.

Now this gives no authority to rescind or alter a contract entered into between the State of Wisconsin on the one side, and a natural person, or a corporation created by another State, on the other. That any State has a right to make such a contract, unless forbidden by its Constitution, there can be no doubt.

As we have already shown to the Court, the Chicago and North-Western Railway Company was in part formed by the consolidation of the Rock River Valley Union Railroad Company of Wisconsin, and the Illinois and Wisconsin Railroad Company of Illinois, under the authority of the Legislature of each State. The act of the Wisconsin Legislature was passed March 10, 1855, and is Exhibit 6 of the bill.

At the end of the second section of this act, it is provided that the said corporation, thus formed by consolidation, "shall "have all the rights, privileges, and franchises conferred on "the said companies by the laws of the States of Wisconsin "and Illinois respectively, the same and not otherwise as though "the said consolidation had not taken place, and the right of "way may be taken in the same manner, in all respects, as "though the said companies had not consolidated."

By this act the State of Wisconsin contracted with the Illinois and Wisconsin Railroad Company of Illinois, that if it would unite itself with the Wisconsin corporation, the two companies thus united should have all the "rights, privileges, and fran- "chises" conferred on either company by the laws of their respective States. The Illinois corporation was to have the same rights in Wisconsin that it possessed in Illinois, one of which was the right to demand reasonable rates of fare and freight, without any pretense on the part of the State to exercise the control claimed by Wisconsin over its own corporations, there being no "reserved power" in Illinois. The State of Wisconsin said to the Illinois corporation, "if you "will unite your capital with that invested in the road built "within my borders, and consolidate your stock with the stock "of that road, you shall lose none of your rights, privileges "or franchises."

The offer thus made was accepted, but the pledge has been kept with Punic faith.

The 5th section of the same act provides, as follows:

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The 5th section of the same act provides, as follows:

"The said consolidated company shall be and remain subject

"to the laws of the State of Wisconsin and the State of "Illinois, respectively, and shall have in all respects the same "privileges as though this consolidation had not taken place; "*provided*, the laws of the State of Illinois shall have no "force or effect in the State of Wisconsin under the provisions "of this act."

This clause is an additional pledge that although the road in each State would remain under the control of the local laws, yet the Illinois Company should have "in all respects "the same privileges as though this consolidation had not "taken place"—that is to say, it should lose none of its rights by virtue of the consolidation. But in defiance of this pledge, its right to control its own business and rates, the State of Wisconsin now seeks to take away.

It would be mere paltering with good faith to say that the act under consideration only applies to the consolidated road within the limits of Wisconsin, and, therefore, is no violation of the contract with the Illinois corporation. There is now, as a matter of fact, no such separate corporation. The interests of the stockholders of the Illinois corporation are identified and consolidated with those of the stockholders in the Wisconsin corporation. A blow at the Wisconsin portion of the road is the same as if struck in Illinois. While, in a metaphysical sense, there may be distinct entities in the two States, in substance, and for all the actual purposes of corporate life, and in reference to all the actual interests of the stockholders, the two corporations are but one. The State of Wisconsin, by this legislation, is destroying the interests of

the stockholders in the Illinois corporation in a mode which could not have been adopted by the State of Illinois, and is doing this in defiance of its pledge to the Illinois Company, that it should lose none of its rights by consolidation.

Besides the contract of the State of Wisconsin, already stated, the State made a subsequent pledge of the same character.

On the 2nd of June, 1864, the Chicago and North-Western Railway Company consolidated its stock with an Illinois corporation, known as the Galena & Chicago Union Railroad Company, the consolidated road retaining the name of the former company.

On the 15th of February, 1865, the Legislature of Wisconsin passed an act in relation to this road (Exhibit 12 of bill), the third section of which provides that the consolidated company "may have and exercise all the powers heretofore conferred by the laws of this or any other State, upon the "Chicago and North-Western Railway Company, and the "Galena and Chicago Union Railroad Company, or any "other company consolidated with it."

Although the State of Wisconsin can repeal or alter the charter of any corporation it may itself create, yet if it makes a contract with a corporation of another State, such contract is as far beyond its power to violate as if made with a natural person.

If the State of Wisconsin should become by any mode the owner of a railroad within its borders, it could unquestionably

contract with an Illinois corporation to operate the road, and it could not alter such contract by virtue of any control given to it by its constitution over corporations of its own creation.

Such foreign corporation would not, by such contract, become a Wisconsin corporation created by that State, and it is only as to such corporation that it can claim to be exempted from the provision of the Federal Constitution, forbidding the violation of contracts.

In the case supposed, the Illinois corporation would be exercising its faculties in the State of Wisconsin, under a contract with the latter State, but it would still retain its identity as a foreign corporation.

In the case of Railway Co. *vs.* Whiton, 13 Wallace, 284, this Court used the following language in explaining the meaning of a previous decision, and what is said is precisely applicable to the point we are seeking to present.

Referring to the case of the Railway Company *vs.* Harris, 12 Wallace, 65, the Court, by Mr. Justice Field, said:

"In that case a Maryland railroad corporation was empowered by the Legislature of Virginia to construct its road through that State, and by an act of Congress to extend a lateral road into the District of Columbia. By the act of Virginia the company was granted the same rights and privileges in that State, which it possessed in Maryland, and it was made subject to similar pains, penalties and obligations. By the act of Congress the company was authorized to

"exercise in the District of Columbia the same powers, rights "and privileges in the extension and construction of the road "as in the construction and extension of any railroad in "Maryland, and was granted the same rights, benefits and im- "munities in the use of the road which were provided in its "charter, except the right to construct from its road another "lateral road, and this Court held that these acts did not "create a new corporation, either in Virginia or in the District "of Columbia, but only enabled the Maryland corporation to "exercise its faculties in that State and District: they did not "alter the citizenship of the corporation in Maryland, but only "enlarged the sphere of its operations, and made it subject to "suit in Virginia and in the District. The 'corporation,' said "the Court, 'cannot migrate, but may exercise its authority in "'a foreign territory, upon such conditions as may be pre- "'scribed by the law of the place.'"

In the case of Morris Canal and Banking Company *vs.* Townsend, 24 Barb., 663, the Court used the following language:

"It is contended that our Legislature can not authorize a "foreign corporation, located in another State, and subject to "no power of visitation or control on the part of our function- "aries, to take lands in this State belonging to its citizens. "There is certainly nothing in our Constitution thus restrict- "ing the power of exercising the right of eminent domain. "The objection must be urged on the allegation of incompati- "bility. But incompatibility with what? Certainly not "with our ordinary practice. We have recognized the exist- "ence of foreign corporations in various ways, and granted to

"them many privileges in this State. We have laws to pre-
"vent the forgery of the bills of foreign banks. We authorize
"foreign insurance companies to transact business in this
"State. Foreign corporations may institute, maintain and
"defend suits in our State courts, and they do so. And we
"have authorized a railroad company of another State—the
"New York & New Haven Railroad Company—to extend
"their road into this State, to acquire (compulsorily, if need
"be) the title to, or the right to use the lands of our citizens
"in the county of Westchester. So far as I have heard, none
"of the acts confering such privileges, powers and rights,
"have been deemed incompatible with our institutions, or the
"rights of our citizens, and therefore void."

These cases clearly show that a State may contract with a foreign railway corporation. The State of Wisconsin has done so, and we ask that it shall not be permitted to violate its contract.

VI.

THE ACT VIOLATES, IN PRINCIPLE, THE TERMS OF THE CONGRESSIONAL LAND GRANT OF JUNE 3D, 1856, WHICH REQUIRED, AS ONE OF THE CONDITIONS OF THE GRANT, THAT THE ROADS RECEIVING ITS BENEFITS, SHOULD "REMAIN "PUBLIC HIGHWAYS FOR THE USE OF THE GOVERNMENT OF "THE UNITED STATES, FREE FROM TOLL OR OTHER CHARGES "UPON THE TRANSPORTATION OF PROPERTY OR TROOPS OF "THE UNITED STATES," AND THAT THE MAILS SHOULD BE TRANSPORTED AT SUCH PRICES AS CONGRESS MIGHT BY LAW

DIRECT. IF THE LEGISLATURE OF WISCONSIN CAN PASS SUCH AN ACT, IT CAN FIX A RATE OF COMPENSATION WHICH WILL PREVENT THE OPERATION OF THE ROAD, OR DISABLE IT FROM PERFORMING ITS DUTIES TO THE GENERAL GOVERNMENT.

The State of Wisconsin desired to obtain a grant of Government land to aid the building of railroads. It obtained it on the above conditions, and by an act passed November 3, 1856, it accepted the grant on these conditions. The Legislature of the State can pass no law violative of these conditions; and yet the act under consideration asserts a power and is founded on a principle completely destructive of the conditions of the congressional grant. It is plain, if the Legislature of Wisconsin can determine the precise rate at which this corporation shall perform its duties, or can fix an arbitrary maximum, it can take from the corporation all power to operate the road. It can annihilate it. This act says to the corporation, in effect, "if you do not transport freight and "passengers at the rates fixed by this act, you shall lose your "franchises and cease to exist." It is not in the power of the State to say this, because the corporation owes a duty to the Federal Government which the State can not incapacitate it to perform. The charter in terms imposed that duty upon the company; and independently of the charter, the terms of the congressional grant would have required it. It is plain that the corporation can not perform this duty to the Government unless it is permitted to charge a reasonable compensation for performing its duties as a common carrier to the people of Wisconsin.

The act in question is found on page twenty, volume second, of U. S. Statutes at large, and is entitled "An act granting "public lands to the State of Wisconsin, to aid in the construc- "tion of railroads in said State." The third section provides that "said railroads shall be and remain public highways for "the use of the Government of the United States, free from "toll or other charge upon the transportation of property or "troops of the United States."

The fifth section, provides "that the United States mail shall "be transported over said roads, under the direction of the "Post Office Department, at such price as Congress may by "law direct."

VII.

THE ACT IN QUESTION VIOLATES THE CONTRACT ENTERED INTO BETWEEN THE CORPORATION AND ITS BONDHOLDERS, WHICH CONTRACT THE STATE HAD AUTHORIZED, AND THUS VIOLATES THE TENTH SECTION OF THE FIRST ARTICLE OF THE FEDERAL CONSTITUTION, WHICH FORBIDS A STATE TO PASS A LAW IMPAIRING THE OBLIGATION OF CONTRACTS.

The charters of the various companies, by the consolidation of which the Chicago and North-Western Railway Company was formed, expressly empower the corporations to issue their bonds, and to mortgage their property to secure payment of the debt. The act authorizing their consolidation contained the same grant of power. Under this authority this company has contracted and now owes a debt amounting to above forty

millions of dollars. These bonds have gone over this country and Europe, into the hands of persons who knew they were issued by the authority of the State of Wisconsin, and who could never have supposed that a State, deriving its very existence from a constitution, designed to secure a system of just laws and the security of natural rights, either would or could take to itself the income of the property thus mortgaged, and deprive the company of all means of paying its bonds.

This corporation has contracted to pay a vast sum of money in return for the same amount received and expended by it in an enterprise which has added vastly more than that amount to the value of the property owned by the citizens of the State. The State now passes a so-called law taking from the corporation a large portion of its income, for the supposed benefit of the public, and thereby taking away, to a great extent, the means of performing its contract with its creditors. But the defenders of the act say the Legislature had a reserved right to pass it, and perpetrate this injustice. It had a right to amend the charter of this company. If, before these bonds were issued, it had thought proper to take away the right to issue them, its power to do so could not have been denied. But we do deny, the bonds having been issued, that it can now impair the contract between the corporation and the bondholders, by taking from the corporation for the public use, and without compensation, the means of payment. Under the power given by the Legislature, the company has conveyed its property, subject to a right of redemption. Can the Legislature, under pretense of amending its charter, cancel that conveyance? Can it enact, as in principal it has

done, that all the income from the property conveyed above the expenses of operating the road, shall be paid into the State treasury, or devoted to public uses? Is this, in any just sense, an amendment of the charter?

The contract between the company and its bondholders has become an accomplished fact, which the Legislature can not change. The Legislature has authorized the creation of the debt, and the conveyance of the property to secure it, and whatever amendment of the charter it may make, it can not take from the mortgagees either the property conveyed or its income. It might as well undertake, under pretense of amending the charter, to amend, in express terms, the deeds of trust executed by the corporations.

No Court has ever held that under the reserved power to alter or repeal charters, contracts between the corporation and third persons can be impaired, except the Supreme Court of Wisconsin, when passing upon this law. As the question arises under the Federal Constitution, the decision belongs to this tribunal. The Supreme Court of Massachusetts explicitly denies that contracts between the corporation and third persons can be affected by an alteration of the charter. In Durfee *vs.* Old Colony, 5 Allen, 247, that Court speaks as follows:

"It would be well to add, in order to avoid misapprehen-
"sion, that we do not intend to say that the Legislature have
"any power to change or modify an act of incorporation in
"such a way as to affect, in a material particular, a contract
"which they have entered into with a third person. Such an

"exercise of legislative power would be unconstitutional and "invalid, because it would impair the obligation of a con- "tract."

In Tomlinson *vs.* Jessup, 15 Wallace, 459, this Court says:

"The reservation affects the entire relation between the "State and the corporation, and places under legislative con- "trol all rights, privileges and immunities derived by its "charter directly from the State. Rights acquired by third "parties, and which have become vested under the charter "in the legitimate exercise of its powers, stand upon a "different footing; but of such rights it is unnecessary to "speak here."

A question which seems identical with this in principle has already been decided by this Court, in the well-known case of Curran *vs.* The State of Arkansas, 15 Howard, 304, already cited in another connection.

The State of Arkansas owned the entire stock of the Bank of Arkansas, and was its creditor for a large amount. The Legislature passed an act, appropriating all the property of the bank to the payment of debts due the State, leaving no means of paying private creditors. The question of the validity of that act came before this Court, and it was held unconstitutional, because impairing the obligation of a contract.

The Court, after stating the contract of the bank with its bill-holders, proceeds in its opinion as follows:

"Such were these contracts and their obligations; and it "would seem to require no argument to prove that a law "authorizing and requiring such a corporation to distribute "its property among its stockholders, or transfer it to its sole "stockholder, leaving its bills unredeemed, would impair the "obligation of the contracts contained in those bills. The "cases of Bronson *vs.* Kinzie *et al.*, 1 Howard, 311, and Mc-"Cracken *vs.* Hayward, 2 *ibid*, 608, which will be more "particularly adverted to hereafter, leave no doubt on that "point Indeed, it has not been attempted to maintain that "such a law, operating on the property of a mere private cor-"poration, whose charter the Legislature could not repeal, "would be valid. But it is argued that this is a different "case; that the Legislature has power to destroy this cor-"poration, and thereupon its contracts are no longer in exist-"ence, and can not be enforced against the property of the "corporation, which, upon the repeal its charter, reverts to the "grantors of its lands and escheats, so far as it is personalty, "to the State; and that if it be in the power of the State "thus to destroy the remedies of creditors, by repealing the "charter, their rights must be considered to be entirely subject "to the will of the State, and no law can impair the obligation "of their contracts, because subjection to any law which may "be passed, belongs to the very existence of such contracts. "Or, to express the same ideas in different words, that the "State created and can destroy the corporation and all its con-"tracts, and, as it can thus destroy them by repealing the

"charter, it can modify, obstruct, and abridge the rights of "creditors and the obligations of their contracts, without re- "pealing the charter.

"Neither these premises, nor the conclusion deduced from "them, can be admitted.

"This banking corporation, having no other stockholders "than the State, it is not doubted that the State might repeal "its charter; but that the effect of such a repeal would be en- "tirely to destroy the executory contracts of the corporation, "and to withdraw its property from the just claims of its "creditors, can not be admitted."

It will be perceived the Court expressly admits that, the bank being wholly owned by the State, its charter could be repealed, and of course could be altered. The State of Arkansas had then at least all the power over the charter which the State of Wisconsin has over the charters of railway companies which it has incorporated. The parallel, thus far, is complete. The State of Arkansas undertook to appropriate the property of the bank to the payment of a debt due to itself—that is, to the people. The State of Wisconsin has undertaken to appropriate the property of the railway company, or its income, which is the same thing, to the benefit of the people, without even the excuse which Arkansas had—that there was a debt due the State. Arkansas took the property under pretense of paying a debt due to itself. Wisconsin takes the property without any pretense at all, except that of power. This Court interfered, and said the State of Arkansas could not do this

as against the creditors of the bank. Why should not the same thing be said in reference to the State of Wisconsin?

Mr. Chief Justice Ryan, in the opinion already cited, says, in reference to this position, on page 35 of his opinion:

"These defendants took their franchises, and their credit-
"ors invested their money, subject to the reserved power, and
"suffer no legal wrong when that is exercised."

Equally true was it that the creditors of the Arkansas bank took the notes of the bank, subject to the power of alteration or repeal, and that position was taken in the argument of that case, as shown in the extract from the opinion above given. Nevertheless, this Court held this power could not be so exercised as to take from the bank the means of paying its creditors.

It is said by Mr. Chief Justice Ryan that the obligation of the railway company to its creditors remains, and is not impaired by lessening the means of payment.

The same position was taken by Mr. Justice Daniel, in his dissenting opinion in the Arkansas case, but the majority of the Court, speaking through Mr. Justice Curtis, held otherwise, and said:

"The obligation of a contract, in the sense in which those
"words are used in the Constitution, is that duty of perform-
"ing it which is recognized and enforced by the laws; and if
"the law is so changed that the means of legally enforcing

"this duty are materially impaired, then the obligation of the "contract no longer remains the same." (Page 319.)

A very similar question arose in the late case of Baring *vs.* Dabney, 19 Wallace, 8.

In that case, an act of the Legislature of South Carolina in regard to a State bank—in which the State was the sole stockholder—came under review, and the principles announced in Curran *vs.* State of Arkansas were reaffirmed.

The case of Von Hoffman *vs.* City of Quincy, 4 Wallace, 548, is also strikingly analogous to the case at bar.

The city of Quincy, in Illinois, had incurred a large indebtedness, by subscription to railway stock, for which it had issued its bonds.

By the law in force when the bonds were issued, the city had power to levy and collect a special annual tax sufficient to enable it to pay the annual interest on any bonds it might issue, for railway purposes. Subsequently to the issuing of the bonds, the Legislature passed an act limiting the rate of taxation for the city. The revenue raised, under the new law, was not sufficient to enable the city to pay the interest on its bonds, after meeting all the expenses of municipal administration. Thereupon the holder of certain of these bonds, having obtained judgment, applied to the Circuit Court of the United States for a mandamus to compel the city to levy a special tax

as against the creditors of the bank. Why should not the same thing be said in reference to the State of Wisconsin?

Mr. Chief Justice Ryan, in the opinion already cited, says, in reference to this position, on page 35 of his opinion:

"These defendants took their franchises, and their credit-
"ors invested their money, subject to the reserved power, and
"suffer no legal wrong when that is exercised."

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sufficient to pay the judgment. The city answered, setting up that it had levied and collected all the taxes which its charter, as amended, would permit.

We pause here a moment to note the almost exact parallelism between that case and the one at bar. In that case, the Legislature of Illinois had all the power to alter or repeal the city charter, the corportion being public, that the State of Wisconsin can have, under any construction, to alter or repeal a railroad charter. It exercised its power in the same way that Wisconsin has sought to do. It limited the rate at which the municipal corporation should tax its citizens. The State of Wisconsin has attempted to limit the rate at which the railway corporation may charge the public for services rendered. A creditor of the municipal corporation appealed to the courts, and asked that this attempted limitation of the city's power should be pronounced invalid, because it impaired the obligation of his contract. A creditor of the railway corporation now makes a similar appeal. In the former case, this Court held the limitation invalid. Must it not do so in the case at bar?

It is true, in that case, the creditor did not come to the courts until the city had actually defaulted as to its interest. In this case, the creditor has not waited until an actual defalcation has occurred. But the question in the two cases is the same. It is merely brought before the Court by different methods. If the Wisconsin act would be held invalid after the railway company had defaulted in its interest, it must be held equally so before such defalcation. It is the *principle*

of the act that is in question. Its validity must depend on that, and not upon events subsequently to occur. If the railway company, rather than destroy its credit, borrows money for the payment of its interest, the fact of payment does not change the character of this act. In the case cited, the Court said:

"It is equally clear that where a State has authorized a "municipal corporation to contract and to exercise the power of "local taxation to the extent necessary to meet its engagments, "the power thus given can not be withdrawn until the power is "satisfied. The State and the corporation, in such cases, are "equally bound." (Page 554–5.)

I respectfully submit that no solid distinction can be drawn between that case and the case before the Court.

Hawthorne *vs.* Calef, 2 Wallace, 10, and Woodruff *vs.* Trafnal, 10 Howard, 190, are also cases in which it was held that an amendment of a charter could not impair the rights of creditors of the corporation.

VIII.

THE ACT OF THE WISCONSIN LEGISLATURE UNDER CONSIDERATION IS VOID, BECAUSE IT IS A REGULATION OF INTERSTATE COMMERCE.

The 18th section of the act of the Wisconsin Legislature is as follows:

"Sec. 18. Nothing contained in this act shall be taken as "in any manner abridging or controlling the rates for freight "charged by any railroad company, in this State, for carrying "freight which comes from beyond the boundaries of the "State, and to be carried across or through the State; but "said railroad companies shall possess the same power and "right to charge such rates for carrying such freight as they "possessed before the passage of this act."

The Court will observe, the act being general, and the exception being only as to freight coming from beyond the limits of Wisconsin, and traversing the State to some point *without* its limits, it of course follows that as to all freight shipped *within* the limits of Wisconsin, and destined to a point beyond its boundaries, the act applies. Whatever the object of this provision may have been, it is directly in conflict with the Constitution of the United States, inasmuch as it is a regulation of inter-state commerce. On this point this Court has spoken, and it is only necessary to quote the language of the decision.

In the case entitled "State Freight Tax," 15 Wallace, 232, the Court said:

"If, then, this is a tax upon freight carried between States, "and a tax because of its transportation, and if such a tax is "in effect a regulation of inter-state commerce, the conclusion

"seems to be inevitable that it is in conflict with the Con-
"stitution of the United States. It is not necessary to the
"present case to go at large into the much debated question,
"whether the power given to Congress, by the Constitution, to
"regulate commerce among the States is exclusive. In the
"earlier decisions of this Court, it was said to have been so en-
"tirely vested in Congress that no part of it can be exercised
"by a State. It has, indeed, often been argued and some-
"times intimated by the Court that, so far as Congress has
"not legislated on the subject, the States may legislate re-
"specting inter-state commerce. Yet, if they can, why may
"they not add regulations to commerce with foreign nations
"beyond those made by Congress, if not inconsistent with
"them, for the power over both foreign and inter-state com-
"merce is conferred upon the Federal Legislature by the same
"words. And certainly it has never yet been decided by this
"Court that the power to regulate inter-state, as well as foreign
"commerce, is not exclusively in Congress. Cases that have
"sustained State laws, alleged to be regulations of commerce
"among the States, have been such as related to bridges or
"dams across streams wholly within a State, police or health
"laws, or subjects of a kindred nature, not strictly commercial
"regulations. The subjects were such as in Gilman *vs.*
"Philadelphia, (3 Wallace, 713), it was said, 'can be best
"'regulated by rules and provisions suggested by the vary-
"'ing circumstances of different localities, and limited in their
"'operation to such localities respectively.' However this
"may be, the rule has been asserted with great clearness, that
"whenever the subjects over which a power to regulate com-
"merce is asserted are in their nature national, or admit of

"one uniform system or plan of regulation, they may justly be "said to be of such a nature as to require exclusive legislation "by Congress. Surely transportation of passengers or merch- "andise through a State, or from one State to another, is of "this nature."

In another part of the opinion, the Court speaks as follows:

"Nor is a rule prescribed for carriage of goods through, "out of, or into a State, any the less a regulation of transpor- "tation, because the same rule may be applied to carriage "which is wholly internal. Doubtless a State may regulate "its commerce as it pleases. If a State chooses to exact "conditions for allowing the passage or carriage of persons or "freight through it into another State, the nature of the ex- "action is not changed by adding to it similar conditions for "allowing transportation wholly within the State."

No language of ours can add force to the above quotations. The Court says, in terms: "Surely transportation of passen- "gers or merchandise through a State, or from one State to "another, is of this nature"—that is, of such a nature as, in the language of the Court, "to require exclusive legislation "by Congress." This act, in terms, regulates the transportation of freight from within the State of Wisconsin to points without the State, and is therefore void, under the express language of this decision. This point is decisive of the invalidity of this law, and we can not add to its weight by further comment.

IX.

We do not know that the jurisdiction of the Court will be questioned. It is settled by the following cases:

Osborn *vs.* U. S. Bank, 9 Wheat., 738.
Dodge *vs.* Woolsey, 18 How., 331.

In connection with the act under consideration, we wish to bring to the cognizance of the Court another act, which went through the Legislature of Wisconsin side by side with the one now drawn in question, and became a law on the following day. We insisted, in the case decided by the Supreme Court of Wisconsin, that this act worked a repeal of the act first passed. That Court held otherwise, and upon this question we

suppose this Court will be governed by that ruling. We bring this act before the Court, because it shows how railway companies in Wisconsin may be confined within reasonable charges by constitutional legislation, and because it is a legislative recognition of the fact that what are reasonable rates is a judicial question. It also shows that there were intelligent men in the Legislature, who had no faith in the validity of the first act, and therefore insisted upon the passage of the second.

This second act contains various provisions in regard to railways, and declares that any railway company, which shall charge more than a fair and reasonable rate of compensation, shall be deemed guilty of extortion, and fined not less than five nor more than twenty-five hundred dollars, either party being entitled to a jury.

Both of these acts are printed as an appendix to this argument.

We have endeavored to show, in the preceding pages, the invalidity of the act of the Wisconsin Legislature under the Federal Constitution. With the impolicy or immorality of such legislation the Court has little concern. Still, if it be dishonest in principle, and unwise in policy, even in the lowest sense of that term, it is certainly not entitled to a favorable consideration from this tribunal in the settlement of doubtful questions.

The State of Wisconsin has some thousands of miles of railway, built by foreign capital. These roads were indispensable to the development of the great material resources of the State. To secure them, it held out every inducement within its power to the citizens of other States and countries to invest their fortunes under the protection of Wisconsin laws. Not a dollar of this capital would ever have been furnished, if it had been supposed the railways, when built, were to be managed by State commissioners invested with power to determine the rates of fare and freight. But the sentiment of the State, no doubt, was as expressed by its Supreme Court, through Chief Justice Dixon, in the following words:

"This obligation and promise, which spring from the act of "incorporation and invitation by the State to persons to invest "their money in the stock, it is presumed no legislative body "would disregard, except when the company, by gross and "wanton abuse of its privileges had forfeited its rights, and "then, instead of legislative action, it is also presumed the "regular course of judicial proceedings would be preferred."

Whiting *vs.* S. & F. R. R. Co., 25 Wis., 167.

These were just words, and honestly uttered. But the legislation of the session, which gave birth to the act under consideration, was inspired by a different spirit. One of those gusts of popular passion, to which all communities are liable, had swept over the West. While the principle which underlies this movement is hostility to accumulated wealth in any form, it has aimed its first blows at corporate and especially at railway property. Under the wretched sophistry embodied in the cry that "the creature is not greater than the creator," the leaders of this mad crusade have blinded the judgment even of honest men. Railway corporations unavoidably commit occasional injustice in their vast business, and by skillfully inflaming the prejudice or passion thus excited, it was easy for the net work of farmers' clubs and granges which cover the State, to send members to the Legislature, to whom argument and explanation were addressed in vain. They not only passed the obnoxious act now under consideration, but at the same session they increased the rate of taxation against the railway company from three per cent. of its gross earnings, which it had previously been, to four per cent., adding thereby, sixty thousand dollars to its annual taxation, and thus exacting for the coffers of the State thirteen per cent. of the net income of the road.

And what has been the result of this interference with the rates? We copy the following paragraph from the annual report, made to the stockholders in August, 1875, by Mr. Keep, the President of the Chicago and North-Western Railway Company:

"An examination of the business of the year shows that

"more than one-half of the decrease in gross earnings was "caused by a reduction of passenger and freight rates, mainly "induced by the operation of the 'Potter Law,' and by the "enforcement of other kindred statutes 'regulating' trans- "portation on railroads in the States of Illinois, Wisconsin, "Iowa and Minnesota.

"There was an average reduction of $\frac{1852}{10.000}$ cents per pas- "senger per mile, amounting to $216,267.96; and a reduction "on freight of $\frac{1742}{10.000}$ cents per ton per mile, amounting to "$791,819.95; giving a total of $1,008,087.91, taken from "the revenue by reduction of rates, and not by reduction of "business."

This sum, more than a million of dollars, has been taken for the benefit of the public, from the annual income of a railway company which has never paid the legal rate of interest upon the money invested in its construction, and which, since the year 1872, has not been able to pay any dividend whatever to the luckless owners of its common stock. Yet we are gravely told by the Supreme Court of the State, that "their "rights in their material property are inviolate and shall never "be violated with the sanction of this Court." And that Court virtually censures counsel because they characterize such a legislative proceeding as "confiscation," and says "the people "of Wisconsin are too intelligent, too staid, too just, too "busy, too prosperous for any such horror of doctrine; for "any leaning towards confiscation or communism." That the people of Wisconsin are prosperous we do not doubt. The railways have made them so. That they are as just as men in

general is probably true. We trust. however, that the holders of the bonds and stocks of Wisconsin railroads may be pardoned the opinion, that the *justice* shown in the recent railway legislation is best expressed in the words which a great poet has put into the mouth of a Highland chieftain who lived two centuries ago:

> "The good old rule sufficeth me; the simple plan,
> That he should take who hath the power
> And he should keep who can."

The act in question has overthrown the most sacred rights of property. It has checked the growth of the State by substantially putting an end to the construction of railways. It has tarnished the reputation of the State and that of the country at large, in every community in the world where American railway bonds are bought and sold. We submit the case, relying upon the wisdom and justice of this great tribunal for the protection of rights secured, as we believe, by the solemn guarantees of the Federal Constitution.

C. B. LAWRENCE,
Of Counsel for Appellants.

APPENDIX.

LAWS OF WISCONSIN RELATING TO RAILWAYS.

APPROVED MARCH 11TH AND 12TH, 1874.

CHAPTER 273.

AN ACT *relating to railroads, express and telegraph companies, in the State of Wisconsin.*

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. All railroads in the State of Wisconsin are hereby divided into three classes, to be known as Class A, Class B, and Class C. Class A shall include all railroads or parts of railroads in the State of Wisconsin now owned, operated, managed or leased either by the Milwaukee and St. Paul Railway Company, the Chicago and North-Western Railway Company, or the Western Union Railway Company. Class B shall include all railroads or parts of railroads, owned, operated, managed or leased by the Wisconsin Central Railway Company, the Green Bay and Minnesota Railway Company, or the West Wisconsin Railway Company. Class C shall include all other railroads or parts of railroads in said State. Railways classified.

SECTION 2. Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in the several classifications as herein Limit of fare.

prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: Class A, three cents; Class B, three and one-half cents; Class C, four cents; provided that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of the rate above prescribed; and provided further, that the rates of transportation herein prescribed may be reduced as hereinafter provided.

Classification of freights.

SECTION 3. All freights hereafter transported upon any railroad or part of a railroad in this State are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as Class D, E, F, G, H, I and J. Class D shall comprise all grain in car-loads; Class E shall comprise flour in lots of fifty barrels and lime in lots of twenty-four barrels or more; Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more; Class G shall comprise lumber, lath and shingles in car-loads; Class H shall comprise live stock in car-loads; Class I shall comprise agricultural implements, furniture and wagons; Class J shall comprise coal, brick, sand, stone and heavy fourth-class articles in car-loads; and in addition to the several articles in the said special classes, shall be added other articles, as and in the manner hereinafter prescribed, except into classes D, E, G and H; and all articles not above enumerated, or subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter provided to be appointed, as said articles were classified by the

Milwaukee and St. Paul Railway, which classification went into effect on the 15th day of June, 1872.

SECTION 4. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad designated in section one as Class A or B, shall charge for or receive a greater or higher rate for carrying articles named in the several special classes herein designated, than is hereinafter provided—namely: Class D, not exceeding six cents per 100 pounds for the first twenty-five miles, and not exceeding four cents per 100 pounds for the second twenty-five miles, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof, unless the fraction shall be less than thirteen miles, in which case the rate shall be one cent for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one-half cent per hundred pounds shall be received for such twenty-five miles over said first mentioned distance. Class E, not exceeding twelve cents per barrel for the first twenty-five miles, and not exceeding eight cents per barrel for the second twenty-five miles, and not exceeding four cents for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two cents per barrel for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one cent per barrel shall be charged for such additional twenty-five miles over said two hundred miles. Class F, not exceeding fifteen cents per barrel for the first twenty-five miles, and not exceeding six cents per barrel for the second twenty-five miles, and not exceeding three and one-half cents per barrel for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one and one-half cents

Maximum rates for freight of the seven special classes on the roads classed A and B.

As to computation of distance, see end of section 5.

per barrel for said fractional part. Class G, not exceeding eight dollars per car-load for the first twenty-five miles, and not exceeding five dollars per car-load for the second twenty-five miles, and not exceeding two dollars per car-load for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar and fifty cents per car-load for such fractional part. Class H, not exceeding ten dollars per car-load for the first twenty-five miles, and not exceeding seven dollars per car-load for the second twenty-five miles, and four dollars per car-load for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two dollars per car-load for such fractional part. Class I, not exceeding eleven dollars per car-load for the first twenty-five miles, and not exceeding six dollars per car-load for the second twenty-five miles, and not exceeding three dollars per car-load for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar and one-half per car-load for such fractional part. Class J, not exceeding eight dollars per car-load for the first twenty-five miles, and not exceeding six dollars per car-load for the second twenty-five miles, and not exceeding two and one-half dollars per car-load for each additional twenty-five miles, or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar per car-load for such fractional part.

Maximum rates for freight of the four general classes on roads classed A and B; and of all kinds of freight on roads classed C.

SECTION 5. No individual, company or corporation owning, operating, managing or leasing any railroad mentioned in Classes A and B, in the first section of this act, shall receive a greater or higher rate for carrying any freight, under the four general classes named

in the third section of this act, than was charged for carrying freights in said four general classes on said railroad on the first day of June, 1873, and no individual, company or corporation owning, operating, managing or leasing any railroad mentioned in Class "C," in the first section of this act, shall receive a greater or higher rate for carrying freight than was received by said individual, company or corporation for carrying such freight on the first day of June, 1873. In computing the rates for carrying any freights, according to the provisions of this act, the distance for carrying such freight shall be computed from where it is received, notwithstanding it may pass from one railroad to another.

Method of computation.

SECTION 6. In no instance shall any such individual, company or corporation, lessee or other person, charge or receive any greater rate or compensation for carrying freight or passengers than hereinbefore provided, and any individual, company or corporation violating or in any way evading the provisions of this act, shall forfeit all right to recover or receive any compensation whatever for the service rendered wherein such violation is attempted, and every agent of any such corporation, lessee or other individual operating any railroad within this State who shall refuse to receive for transportation over the road for which he is agent, in the usual way, any of the articles hereinbefore mentioned, on account of the compensation hereinbefore prescribed being too low, or, receiving any such articles of freight, shall charge or attempt to charge for the transportation of the same, any greater sum than herein fixed, or shall in any manner violate or attempt to violate or evade the provisions of this act, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall pay a fine of not exceeding two hundred dollars for such and every offense, and the injured

Penalties, forfeitures, etc.

party shall have a right of action against said agent, or against the railway company or other persons operating the railroad, or both, in which he shall be entitled to recover three times the amount taken or received from him in excess of the rates prescribed by this act.

Justices of the peace to have concurrent jurisdiction with Circuit Court.

SECTION 7. Justices of the peace shall have concurrent jurisdiction with the circuit court in all prosecutions for violation of this act, with full power and authority to impose fines and to the same extent as the circuit court, and the defendant shall have the right of appeal as in other cases tried before justices of the peace, and justices of the peace shall also have jurisdiction in all civil cases under this act whenever the amount claimed does not exceed two hundred dollars.

Three Railroad Commissioners to be appointed.

SECTION 8. The Governor shall, on or before the first day of May, 1874, by and with the consent of the Senate, appoint three railroad commissioners, one for a term of one year, one for a term of two years, and one for a term of three years, whose term of office shall commence on the first day of May, and shall each year thereafter, on the first day of May, appoint one railroad commissioner for the term of three years, said railroad commissioner to be confirmed by the Senate next convening after said appointment; but no person owning any bonds, stock or property in any railroad, or in the employ of any railroad company, or in any way or manner interested in railroads, shall be so appointed.

Powers of Commissioners.

SECTION 9. Said railroad commissioners shall have power to administer oaths or affirmations, to send for persons or papers under such regulations as they may prescribe, and shall at any and at all times have access to any and all books and papers in any railroad office kept for and used in any railroad office by any railroad company in this State.

Powers of Commissioners continued.

SECTION 10. Said railroad commissioners, in making any examination as contemplated in this act, for the purpose of obtaining information pursuant to this act, shall have power to issue subpœnas for the attendance of witnesses by such rules as they may prescribe. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the circuit court of any county, upon application of the said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners and give his testimony upon such matters as shall be lawfully required by such commissioners, and said court shall have power to punish for contempt as in other cases of refusal to obey the process and order of such court.

Penalty for failing to obey subpœna issued by Commissioners.

SECTION 11. Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said commissioners, and appear and testify as therein required, shall be deemed guilty of a misdemeanor and shall be liable to arraignment and trial in any court of competent jurisdiction, and on conviction thereof shall be punished for such offense by a fine not less than fifty dollars nor more than five hundred dollars; or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had.

Duties of Commissioners.

SECTION 12. Said railroad commissioners shall, during the month of January in each year, ascertain and make return to the State treasurer hereinafter provided: 1st. The actual cost of each railroad in this State up to and including the 31st day of the next preceding December, and if such railroad shall be partly in and partly out of this State, then the actual cost of so much thereof as is in this State. 2d. The total gross receipts resulting from the operation of every such railroad

during the next preceding year ending on the 31st day of December, or of that part of the same which is in this State. 3d. The total net earnings resulting from the operation of any such railroad during the next preceding year, ending on the 31st day of December, or that part of the same which is in this State. 4th. Total interest-bearing indebtedness of the company owning or operating such railroad, and the amount of interest paid by such company during the next preceding year, ending on the 31st day of December, and if any part of such indebtedness has been incurred in consequence of the construction, maintenance, repair, removal or operation of any part of such railroad which is not in this State, or for equipment for such part, such railroad commissioners shall ascertain and determine in such manner as they shall think just and equitable how much of its indebtedness is justly chargeable to that part of said railroad that is in this State, and how much interest shall have been paid by such company during such year ending on the 31st day of the next preceding December, or that part of such indebtedness which is justly chargeable to that part of said railroad that is in this State. The board of commissioners shall prescribe the form and manner in which all reports required from railway companies under the provisions of this act shall be made, and suitable blanks for that purpose, as by said commissioners directed, shall be provided for by the Secretary of State. The records of said board shall at all times be open to inspection by the Governor, Secretary of State, Attorney General and Legislature.

Commissioners may classify articles of freight, and may reduce rates.

SECTION 13. Said railroad commissioners shall have power to classify all articles of freight transported on any railroad, except the articles herein placed in special classes D, E, G and H, placing said articles in either of the general classes herein provided for, or in any of

said special classes, except classes D, E, G and H, and are further empowered and authorized to reduce said rates on any of said railroads or parts of railroads, either in general or special classes, when in their judgment, or a majority of them, it can be done without injury to such railroad.

Railway companies, lessees, etc., to be bound by decision of Commissioners.

SECTION 14. Any individual, company or corporation, owning, operating, managing or leasing any of said railroads or parts of railroads, shall be bound by the decision of such railroad commissioners, or a majority of them, with reference to said rates, and every violation by said individual, company or corporation charging a greater or higher rate shall be deemed guilty of a misdemeanor, and on conviction thereof shall pay a fine of not exceeding two hundred dollars for each and every offense, and the injured party shall have a right of action against said individual, railroad company or corporation operating said railroad, in which he shall be entitled to recover three times the amount taken or received from him in excess of the rates prescribed by this act, to be recovered as provided in section seven of this act.

Penalties for violatoin.

Commissioners to make affidavits.

SECTION 15. Before entering upon the duties of his office each of said commissioners shall make and subscribe and file with the Secretary of State an affidavit in the following form: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Wisconsin, and that I will faithfully discharge the duties of railway commissioner according to the best of my ability; that I am not a stockholder, officer or employe of any railroad or freight company, or in any way interested therein," and shall enter into bonds, with security approved by the Governor, in the sum of twenty thousand dollars, conditioned for the faithful performance of his duty as such commissioner.

Compensation of Commissioners.

SECTION 16. Each of said commissioners shall receive for his service not exceeding twenty-five hundred dollars per annum, payable quarterly, and three dollars per day for traveling expenses for each and every day actually traveled in the performance of the duties herein required; he shall be furnished with an office, furniture and stationery, and necessary books and maps, at the expense of the State. The office of said commissioner shall be kept in Madison, and all sums of money authorized to be paid by this act out of the State Treasury only on the order of the Governor, provided that the total sum of money to be expended by said commissioners for office rent, furniture and stationery shall not exceed the total sum of eight hundred dollars per annum.

Their office to be in Madison.

Commissioners to be deadheads.

SECTION 17. The commissioners shall have the right of passing, in the performance of their duties concerning railroads, on all railways and railway trains in this State free of charge.

This act not to affect rates for freight coming from a different State, to be also carried to a different State.

SECTION 18. Nothing contained in this act shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from beyond the boundaries of the State, and to be carried across or through the State; but said railroad companies shall possess the same power and right to charge such rates for carrying such freight as they possessed before the passage of this act.

Takes effect from publication.

SECTION 19. This act shall take effect and be in force from and after its passage and publication.

Approved March 11th, 1874.

CHAPTER 341.

AN ACT *in relation to Railroads.*

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

Railways declared public highways, and railway companies common carriers.

SECTION 1. All railroads which have been heretofore or may be hereafter created by virtue of any general or special act within the limits of this State, are hereby declared to be public highways; and all railroads or other transportation companies heretofore or hereafter to be created, incorporated or organized by any law, general or special, of this State, are hereby declared common carriers, and shall receive and transport each other's passengers, tonnage or cars, loaded or empty, without unreasonable delay or unjust discrimination, and perishable property shall have the preference in transportation.

Perishable property to have preference in transportation.

No discrimination between individuals, etc.

SECTION 2. All individuals, associations and corporations shall have equal right to have persons and property transported over railroads, and no undue or unreasonable discrimination shall be made in charges for or in facilities for transportation of freight or passengers within the State, or coming from or going to any other State, but excursion and commutation tickets may be issued at special rates.

But excursion and commutation tickets may be issued.

Competing lines shall not consolidate.

SECTION 3. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other

railroad corporation owning or having under its control a parallel or competing line, nor shall any officer of such railroad corporation act as the officer of any other railroad corporation owning or having the control of parallel or competing lines, and the question whether railroads are parallel or competing lines shall, when demanded by the complainant, be decided by a jury, as in other civil issues; provided, that the provisions of this section shall not apply to any contracts now existing, where one corporation has become responsible for the liabilities of another, either by advance heretofore made or by the guaranty of bonds previous to the passage of this act.

No officer or employe of any railway to be interested in furnishing supplies to or in the transportation business of that line.

SECTION 4. No president, director, officer, agent or employe of any railroad or transportation company shall be interested directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freights or passengers over the works owned, leased, controlled or worked by such company.

No discrimination in favor of transportation companies.

SECTION 5. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either by abatement, drawback or otherwise, and no railroad company, or any lessee, manager or employe thereof, shall make any preference in furnishing cars or motive power.

Judges and legislators not to be deadheaded or carried cheap.

SECTION 6. Railroad, railway and transportation companies are hereby prohibited from granting free passes, or passes at a discount, to any State officer, judge of the Supreme Court, judge of the Circuit Court, or judge of any court of record, or member of the Legislature elect; provided that this section shall not be construed to prohibit any one from purchasing one

thousand (1,000) mile tickets or other commutation tickets at the regular established rates.

Penalties as to officers, agents and employes.

SECTION 7. Any officer, agent or employe of any railroad or transportation company violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or by both fine and imprisonment, such fine not to be less than five hundred dollars ($500.00), nor to exceed five thousand dollars ($5,000.00), and such imprisonment not to be less than thirty days nor more than one year.

Penalties as to judges, legislators, &c.

SECTION 8. Any State officer, judge of the Supreme Court, judge of the Circuit Court, or judge of any court of record, or member of the Legislature, or any State officer, judge, or member of the Legislature elect, who shall accept any free pass or pass at a discount, from any railroad, railway or transportation company, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, such fine not to be less than twenty-five dollars ($25.00), nor to exceed one hundred dollars ($100.00), and such imprisonment not to be less than ten days nor more than thirty days.

Penalties as to railway companies if guilty of extortion.

SECTION 9. If any railroad company, organized or doing business within this State, or which may hereafter do business within this State, shall charge, collect, demand, or recover more than a fair and reasonable rate of compensation upon any line or road within this State, which it has the right, license or permission to use, operate or control, the same shall be deemed guilty of extortion, and upon conviction thereof shall be fined in any sum not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) for each offense, with costs of suit, and reasonable attorney

Trial by jury.

fees to be fined by the court; provided that in all cases under this act either party shall have the right of trial by jury.

Repeal of conflicting acts.

SECTION 10. All acts or parts of acts contravening or conflicting with the provisions of this act are hereby repealed.

Takes effect from publication.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.

Approved March 12, 1874.

E-16 E

Supreme Court of the United States.

OCTOBER TERM, 1875.

WILLEM FREDERIK PIEK, *Et Al.*,
Appellants.

vs.

THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY, GEORGE H. PAUL, *Et Al.*
Respondents.

Appeal from the Circuit Court of the United States for the Western District of Wisconsin.

B. C. COOK, Attorney.

CHICAGO, ILL.:
CHARLES E. SOUTHARD, PRINTER, 175 MONROE STREET.
1875.

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STATEMENT OF THE CASE.

The facts necessary to be considered in this case are:

That the Wisconsin and Superior Railroad Company, by its charter passed June 3d, 1856, was authorized to construct, complete, and perpetually to have, use and enjoy, maintain and operate a railroad from Fond du Lac to the north line of this State, and to operate its road in connection with any road which might connect with it, or to connect with such railroad, or either of them, upon such terms as should be mutually agreed upon, and to demand and receive such sums of money for the transportation of persons or property as it from time to time should deem reasonable; said company was authorized to borrow any sums of money and to execute its bonds and mortgage its property to secure the payment of the same; and it should have title in fee simple to the lands acquired by it in pursuance of said act.

That the Madison and Beloit Railroad Company was incorporated August 19, 1848, and authorized to construct a railroad from Beloit to Madison, to make all needful rules, regulations and by-laws touching the business of said company, and to regulate the amount of tolls and the manner of collecting the same, for the business done upon said road; and that said company should be authorized to connect its road with the road of any railroad company in the State of Illinois, or

become part owner or lessee of any railroad in said State, and that any railroad company in the State of Illinois, duly organized under the laws of said State, might connect its road with the road of said company, and might, in like manner, with the consent of said company, become part owner or lessee of said company, or any of its branches, or any portion thereof situated in the State of Wisconsin.

The name of the road was changed to that of Rock River Valley Union Railroad, February 9, 1850, and said company was fully and expressly authorized to borrow money and issue its bonds and mortgages to secure the same.

By act of the Legislature of Wisconsin of March 10, 1855, the Rock River Valley Union Railroad Company, in Wisconsin, and the Illinois and Wisconsin Railroad Company, in Illinois, were authorized to consolidate their capital stock, to make the two companies one, and to place the affairs of the two companies under one board of directors, etc.; and said companies were so consolidated March 30, 1855, under the name of the Chicago, St. Paul and Fond du Lac Railroad Company. A portion of said Illinois and Wisconsin Railroad was in the State of Illinois, and this company was authorized by the law of Illinois, passed February 12, 1851, to consolidate with any railroad then incorporated, or that might be incorporated, in Wisconsin, under the control of a joint board of directors, and upon such terms as might be agreed upon.

The act of the Wisconsin Legislature, passed February 12, 1857, authorized the Chicago, St. Paul and Fond du Lac Railroad Company and the Wisconsin and Superior Railroad

Company to consolidate their capital stock and franchises, and conferred upon the consolidated company all the rights and franchises which belonged to either company. This consolidation was made March 5th, 1857, under the name of the Chicago, St. Paul and Fond du Lac Railroad Company.

March 14th, 1859, an act was passed by the Legislature of Wisconsin providing that, if the Chicago, St. Paul and Fond du Lac Railroad should be sold by virtue of any mortgage given by it, the purchasers, *if desiring to form a corporation* under and by virtue of the laws of that State, or the States of Illinois or Michigan, or any or all of said States, might file a certificate with the Secretary of State, etc., and said corporation should possess all the powers, authorities and capacities acquired by the purchasers or possessed by the said Chicago, St. Paul and Fond du Lac Railroad Company by virtue of any law of the State of Wisconsin, or of the States of Illinois or Michigan. On February 19th, 1859, the Legislature of Illinois passed an act by which the same power was conferred upon the purchasers of the said railroad in the State of Illinois that was conferred upon the purchasers thereof in the State of Wisconsin by the act of March 14th, 1859, aforesaid.

June 2d, 1859, the whole railroad, its property and franchises, was sold as an entire road in both States. June 6th, 1859, the purchasers of said road became incorporated in Illinois and Wisconsin under the acts of February 19th and March 14th, 1859, aforesaid, under the name of the Chicago and North-Western Railway Company.

March 8th, 1862, an act was passed by the Legislature of

Wisconsin recognizing the Chicago and North-Western Railway Company as the successor of the Chicago, St. Paul and Fond du Lac Railroad Company, and conferring upon it all the rights, privileges, powers and authority contained in the charters of the Chicago, St. Paul and Fond du Lac and the Wisconsin and Superior Railroad companies.

The Galena and Chicago Union Railroad Company was incorporated in Illinois January 13, 1836, and by its charter was authorized expressly to prescribe the manner in which its railroad should be used, the rates of toll for the transportation of persons or property thereon, and to borrow money and to give its bonds and mortgages therefor.

June 2d, 1864, the Chicago and North-Western Railway Company and the Galena and Chicago Union Railroad Company consolidated their franchises and property into one corporation by the name of the Chicago and North-Western Railway Company, which consolidation was made in pursuance of the laws of Illinois and Wisconsin, and was ratified by the laws of both States after it was made; and the consolidated company became possessed of all the powers and franchises which had been conferred by the laws of the State of Illinois upon the Chicago and North-Western Railway Company or the Galena and Chicago Union Railroad Company, or by the laws of the State of Wisconsin upon the Wisconsin and Superior Railroad Company, or upon the Chicago, St. Paul and Fond du Lac Railroad Company, or upon the Chicago and North-Western Railway Company, among which powers was the right to fix its rates of compensation for the transportation

of persons and property. Each of said companies, in pursuance of their charters, issued bonds for money used in the construction of its road, and secured the same by mortgage of all its property and franchises.

The consolidated Chicago and North-Western Railway Company issued its bonds to the amount of $48,000,000 to consolidate the debts of all the foregoing corporations. Each of said complainants is the holder of large amounts of the bonds of some of the companies that have become consolidated with the Chicago and North-Western Railway Company and of said last named company itself, which has executed its trust deed to the Union Trust Company, one of the complainants, to secure said bonds said trust deed covers, its entire property and franchises.

All of the laws aforesaid are printed with the bill in this case, and a full list of the bonds issued by each of said companies is given in the bill, with copies of the bonds and trust deeds.

March 11th, 1874, an act was passed by the Legislature of Wisconsin, known as the "Potter Law," by which a certain schedule of rates of compensation for the transportation of persons and property was fixed, and the railroad company was prohibited from charging any greater rates, under very heavy penalties to be inflicted both upon the company itself and its agents. They are made liable to heavy penalties for refusing to receive for transportation any freight on account of the prescribed compensation being too low, or for any attempt to violate or evade any of the provisions of the act,

and the railroad commissioners are authorized further to reduce the rates specified in the act.

The averments of the bill which are admitted by the demurrer are as follows:

First.—The company will not derive from all its sources of revenue a sufficient sum of money to pay the operating expenses of said railway and to pay the interest upon its bonds given for money necessarily expended in the construction and equipment of its railway without paying the interest upon its bonds or making any provision for a sinking fund to retire its bonds as they become due, if its railroad is conducted and operated in accordance with the provisions of said act of March 11, 1874.

Second.—That the sole security for the payment of the bonds aforesaid is the railroad, its equipment and appurtenances as described in the trust deed given to secure the same, and that, if said railroad is operated under the provisions of that act, for the rates of freight and fare therein specified, instead of yielding any return whatever to the owners of said road, the same will be operated at a loss, and, consequently, the value of the road will be destroyed and the security given for the bonds held by the complainants will be destroyed and the bonds will become worthless.

Third.—That the classes of freight established by said act are different from the classification of freight established by the States of Illinois, Iowa or Minnesota for the transportation of freight upon the same road, and that it is practically

impossible to carry on the business of transportation of freight from the State of Wisconsin to either of those States in pursuance of the provisions of the laws of said several States.

Fourth.—That the defendants, the railroad commissioners and the attorney general, have instituted a large number of prosecutions against the agents of said company, and are about to commence many suits and prosecutions to enforce the provisions of said act; and an injunction is asked to prevent the institution of new suits, and to restrain the commissioners from further reducing the rates of fare and freight.

POINTS.

I.

Upon the facts admitted in this record, the enforcement of the "Potter Law" would be to take the property of the railroad company without just compensation.

AUTHORITIES.

Miller vs. The State, 15 Wallace, 498.
Commonwealth vs. Essex Company, 13 Gray, 253.
Tuckahoe Canal Co. vs. Tuckahoe R. R. Co., 11 Leigh, 42.

II.

No such power is given by the reservation in the Constitution of the State of Wisconsin to alter and repeal the charters of corporations.

AUTHORITIES.

Loan Association vs. Topeka, 20 Wallace, 662.

Eaton vs. Boston, Concord and Montreal R. R. Co., 51 N. H., 504.

Wynehamer vs. People, 13 N. Y., 378, 433.

Walker vs. O., C. & N. R. R. Co., 103 Mass., 10, 14.

People vs. Kerr, 37 Barbour, 257, 399.

Nevins vs. City of Peoria, 44 Ill., 500.

Pumpelly vs. Greenbay Co., 13 Wallace, 177.

III.

The enforcement of the act complained of would be a violation of the contract contained in the several charters of the railroad company.

AUTHORITIES.

The State Freight Tax, 15 Wallace, 257.

The Delaware Railroad Tax, 18 Wallace, 225.

Tuckahoe Canal Co. vs. Tuckahoe R. R. Co., 11 Leigh, 42.

IV.

It would be a violation of the contract made between the corporation of the State of Wisconsin and the corporation of the State of Illinois, which were consolidated under the laws of the two States.

Act of the Legislature of Wisconsin conferring powers, etc., on the C. & N. W. R'y Co., passed March 8th, 1862.

V.

It would be depriving the creditors of the complainant company of the security for the payment of their demands, and would be a violation of the contract made with them.

The United States vs. Portland Canal Co. [Not yet reported.]

ARGUMENT.

The questions arising in this case, stated in the simplest form, are:

First.—Has the Legislature of Wisconsin the right to decree that this railroad company shall not charge and receive a reasonable compensation for the use of its property, the personal services of its agents and the risk it assumes in relation to the persons and property transported over its railroad?

Second.—Can this company be compelled to transport persons and property over its road, and to assume the risks of a common carrier in relation to persons and property, without compensation?

Upon these questions I make the following points:

The charters of the several railroad companies are contracts between the State and such companies.

Story's Commen. on Constitu., Secs. 1886-7-8.
Wales vs. Stetson, 2 Mass., 146.

Dartmouth College vs. Woodward, 4 Wheaton, 518.
Binghampton Bridge Case, 3 Wallace, 71.
Holyoke Co. vs. Lyman, 15 Wallace, 511.
Tomlinson vs. Jesup, 15 Wallace, 457.
Wilmington R. R. Co. vs. Field, 13 Wallace, 266.
Delaware R. R. Tax Case, 18 Wallace, 225.

Consequently, the right of this company to fix its own rates of fare and freight is incontrovertible, unless the contract contained in the several charters is modified by the following provision of the Constitution of the State of Wisconsin:

"Corporations without banking powers or privileges may "be formed under general laws, but shall not be created by "special act, except for municipal purposes, and in cases "where, in the judgment of the Legislature, the object of the "incorporation can not be attained under general laws. All "general laws or special acts enacted under the provisions of "this section may be altered or repealed at any time after "their passage."

The question is, what could the Legislature rightfully do under this reservation of power?

That there is some limit to the power of the Legislature in dealing with a corporation seems to be settled. In the case of Miller vs. The State, 15 Wallace, 498, this Court says: "Power to legislate, founded upon such a reservation in a "charter to a private corporation, is certainly not without "limit; and it may well be admitted that it can not be exer- "cised to destroy or to take away rights acquired by virtue

"of such a charter, and which, by a legitimate use of the "powers granted, have become vested in the corporation; but "it may safely be affirmed that the reserved power may be "increased to almost any extent to carry into effect the "original purpose of the grant, or to secure the due adminis- "tion of its affairs so as to protect the rights of stockholders "and of creditors, and for the proper disposition of its assets. "Such a reservation, it is held, will not warrant the Legislature "in passing laws to change the control of an institution from "one religious sect to another, or to convert the fund of the "donors to any new use inconsistent with the intent and pur- "pose of the charter, or to compel subscribers to the stock "whose subscriptions are conditional to waive any of the con- "ditions of their contract."

In the case of Commonwealth vs. Essex Co., 13 Gray, 253, Shaw, C. J., says: "The power to amend or alter "must have some limit, though it is difficult to define it. "Suppose an authority has been given by law to a railroad "corporation to purchase a lot of land for purposes connected "with its business, and they purchased such lot from a third "party; could the Legislature prohibit the company from "holding it? If so, in whom could it vest? could the Leg- "islature direct it to revest in the grantor, or escheat to the "public; or how otherwise?"

If the power to repeal the charter of a railroad company without compensation to the company be admitted, for the sake of the argument, yet it is manifest that a repeal of the charter leaving to the company the absolute right to dispose of

or to remove its property, its iron, ties, fences, buildings, structures and equipment, might be a far less injury to the company than the power to compel it, by heavy penalties, to maintain and operate its road without any compensation, or, which is the same thing, for an inadequate compensation. It is the nature and extent of the power to alter the charter only with which we have to do in this case.

Does this clause in the Constitution give the right to the Legislature to say that, hereafter, this railroad company shall maintain and operate its road and be subject to all the liabilities of a common carrier for hire without any compensation whatever? Does it give the Legislature the right to require this company, without compensation, to furnish locomotives and cars to operate some connecting road upon the ground that the public interest will be promoted thereby? I insist that the true limit of the authority of the Legislature may be defined as follows:

1. The Legislature can not, by an alteration of the charter of this company, take away any right not conferred upon the company by the charter.

2. The Legislature can not, by an alteration of the charter, take the property of the company for public use without just compensation.

In discussing the question whether the right to take reasonable compensation for the transportation of persons and property on its road is a franchise conferred by the charter, or is an incident to the ownership of the property, I shall assume

that, if it is a right which belongs to the company as a necessary incident to the ownership of its property and does not depend upon the charter, then the mere power to alter the charter does not, of itself, include the right to forbid the company from receiving such reasonable compensation for the use of its property. If a railroad company whose charter only conferred the right to build and operate a railroad and was silent as to any right to demand compensation for the transportation of persons and property, would have no right to receive such compensation, it would be because such right could only be conferred by charter; but if, in such case, the company would have the right to receive reasonable compensation, it would be because such right was a necessary incident to its ownership of the property. In what respect does the ownership of property by a corporation differ from ownership by an individual? Has it not the same incidents? The ownership of property by an individual carries with it the right to its beneficial use. Is it so with the property of a corporation? If not, why not?

Did the stockholders of this company acquire their property under the charter so that they can lose their right to the property by an alteration of the charter? Is the railroad itself a franchise, or are the cars and locomotives franchises or parts of a franchise? Surely not, for those things are corporeal, and a franchise is incorporeal. These things are property, held upon the same tenure and upon the same terms that individuals hold property, to-wit: with the right to the beneficial use of it and to hold it subject to be taken for public uses only upon just compensation being made.

This property might be held with the same rights attaching thereto, by individual citizens.

It was not necessary that there should, in every case, have been a corporation to construct and operate a railroad. When the Chicago, St. Paul and Fond du Lac Railroad Company was chartered, it was authorized to borrow money, to issue its bonds and to mortgage its property and franchises to secure the payment thereof. It did this, and the entire property and franchises of the company were sold under the mortgages. The purchasers of the property by their purchase, became vested with all the property and rights which had belonged to the railroad company, and these purchasers held that property and those rights for a certain time without being a corporation at all, and in a condition not to be affected by any alteration or repeal of any act of incorporation. The rights of these purchasers were recognized by the Legislature in the act "To "facilitate and authenticate the formation of a corporation by "the purchasers of the Chicago, St. Paul and Fond du Lac "Railroad," approved March 14, 1859, which, after providing that the purchasers might form a corporation, *if they desired to do so*, contains the following language: "And said cor- "poration shall possess all the privileges, powers and capaci- "ties *acquired by the said purchaser or purchasers*," so that there were privileges, powers, authorities and capacities acquired by the purchasers and held by them without any act of incorporation at all; and I can perceive no reason why ten men of sufficient means may not unite and construct a railroad and use and operate it without any act of incorporation, and without any grant of power from the Legislature further than

may be necessary to enable them to acquire the right of way for their railroad; and if, as may be supposed for the sake of illustration, the road runs only on lands owned by them, they need have no grant of power from the Legislature whatever. Now, if these ten men become incorporated, what rights do they have which they had not before the act of incorporation was passed? The right to act under a single corporate name, and, perhaps, with a limited liability on the part of the individual stockholders.

The act of the State of Illinois, which, together with the act of the State of Wisconsin, authorized the sale of said road—part of the road being in each State—provided that the purchasers of that road under the trust deeds "shall have and "acquire thereby, and shall exercise and enjoy thereafter, all "and the same rights, privileges, grants, franchises, immu- "nities and advantages in and by said mortgage or trust deed "enumerated and conveyed, which belonged to and were "enjoyed by the said Chicago, St. Paul and Fond du Lac "Railroad Company, as fully and absolutely in all respects as "the Chicago, St. Paul and Fond du Lac Railroad Company, "its corporators, shareholders, officers and agents might or "could have done theretofore had not such sale or foreclosure "taken place." Here was a railroad without a corporation, and no alteration of any articles of incorporation could affect its right. This right of these purchasers became legally vested in the Chicago and North-Western Railway Company.

In the case of the Tuckahoe Canal Co. vs. The Tuckahoe Railroad Co. 11 Leigh, 42, the Court says:

"What, then, is here insisted on? Is it a monopoly of "the right to take tolls for the transportation on the canal? "If this be all we can not gainsay it. The canal is their own "property; and property necessarily implies a right in the "owner to the exclusion of all others. Is it a monopoly of "the right to the transportation of the Tuckahoe Valley? If "so, the claim is not admitted. Upon the principles main- "tained by their counsel, it is denied. What right, upon "those principles, has the Legislature to take from the colliers "the liberty of transporting their coal either by wagons or in "any other mode they may elect? What right to prevent "their purchasing from the land-owners the necessary ground "and constructing a railroad *without a charter?* So far as "respects the canal company, the railroad needed no charter "to legalize their operations, if they did not cross the canal. "It was only necessary to enable them to condemn the lands "of others, and to sue and be sued. They do not derive "their right to make such a road for the transportation of "coals from legislative grant. They would have had that "without it, and it could never be affirmed that a charter to "them invaded the previous charter, since, so far as the canal "company are concerned, a charter would have given them "nothing more than they had before, viz., a right to withdraw "their coals from the canal transportation, and to transport "them by land for themselves and others, according to their "own pleasure and ability." * * * *

II.

The Legislature can not by an alteration of the charter take the property of this company for public use without just compensation.

If the Legislature has the power, under the reservation contained in the Constitution, to alter the charter in such manner as to deprive the owners of this property of its beneficial use, it must be upon just compensation. If the charter, when passed by the Legislature and accepted by the corporators, became a contract, it may well be that, but for the power reserved in the Constitution, it could not be altered in any way so as to impair it without the consent of the stockholders, it being protected by the Constitution of the United States; so that, no public necessity would have justified the Legislature in destroying the contract, even upon making compensation. But the Constitutions of the United States and of the State of Wisconsin each contain a provision that private property shall not be taken for public use without just compensation, and this clause of the Constitution entered into and became a part of the contract as well as the clause which provides that the Legislatute may alter or repeal the charters of corporations. Both must be construed together. The right to make any alteration of the charter which the Legislature may see fit to make, may be conceded for the sake of the argument, but it would by no means follow that such change of the charter could be made without compensating the company for its property if the property was thereby taken away. For instance, is it in the power of the

Legislature, by an alteration in the charter of the Chicago and Northwestern Railway Company, to provide that it shall furnish ten locomotives and fifty cars to be used on some other road, because the public interest would be promoted thereby, and this without compensation? or that a certain locomotive or car belonging to this company should be transferred, without compensation, to another company? If this could not be done, it would be for the reason that there are rights of property beyond the sphere of legislation. I quote from the opinion of this Court in the case of Loan Association vs. Topeka, 20 Wallace, 662:

"It must be conceded that there are such rights in every "free government beyond the control of the State. A govern- "ment which recognized no such rights, which held the lives, "the liberty, and the property of its citizens subject at all "times to the absolute disposition and unlimited control of even "the most democratic depository of power, is after all but a "despotism. It is true it is a despotism of the many, of the "majority, if you choose to call it so, but it is none the less a "despotism. It may well be doubted if a man is to hold all "that he is accustomed to call his own, all in which he has "placed his happiness, and the security of which is essential "to that happiness, under the unlimited dominion of others, "whether it is not wiser that this power should be exercised "by one man than by many."

"The theory of our governments, State and National, is "opposed to the deposit of unlimited power anywhere. The "executive, the legislative, and the judicial branches of these "governments are all of limited and defined powers.

"There are limitations on such power which grow out of "the essential nature of all free governments. Implied reser- "vations of individual rights, without which the social compact "could not exist, and which are respected by all governments "entitled to the name. No court, for instance, would hesitate "to declare void a statute which enacted that A. and B. who "were husband and wife to each other, should be so no longer, "but that A. should thereafter be the husband of C., and B. "the wife of D. Or which should enact that the homestead "now owned by A. should no longer be his, but should hence- "forth be the property of B.

If the Legislature, under the reserved right to alter the charter of this company, has the right to deprive the company of its property for public use without compensation, then clearly the right has no limit, and the Legislature may do what it pleases with any portion of the property, whether lands. cars or locomotives. But if it be true—as I have endeavored to show—that the Legislature has not the right under the reservation in the Constitution, to deprive this rail-road company of its property, without just compensation, then the question is narrowed to this: Does the bill show a state of facts which constitutes such a taking?

The averments of the bill necessary to be considered in determining this question may be stated as follows: The company has constructed and equipped its roads at an expense of many millions of dollars: For a portion of this money which it has borrowed it has given its bonds, secured by a trust deed upon its property and franchises: The act complained of

compels the company, under heavy penalties imposed upon both itself and its agents, to operate its road without interruption or cessation: The company is not allowed to receive a sufficient amount to pay the operating expenses of the road and the interest upon the bonds given for money expended in constructing the road, without paying any dividends to its stockholders or providing a sinking fund for the payment of its bonds: The roads—if operated under the act—will be run at a loss, their value be entirely destroyed and the value of the complainants' sole security for the payment of their bonds be entirely destroyed.

Or, if reduced to the simplest form, the averment is, that the company will be perpetually deprived of any beneficial use of its property, and the holders of the bonds of the company will be deprived entirely of the security upon which their money was invested.

The demurrer admits these allegations of the bill to be true, and the question is this: Is this a taking of the property of the company within the meaning of the Constitution? It would seem unnecessary to attempt to prove that the right to a beneficial use of property is a necessary incident to its ownership. In so far as the right to use property is limited to the same extent, the ownership itself is limited. I ask leave to refer to the discussion of this point in my brief filed in the case of the Winona and St. Peter Railroad Company vs Blake *et al.*, rather than to repeat what I have there stated. The point has been settled by the following cases:

Eaton vs. Boston, Concord and Montreal R. R. Co., 51 N. H., 504.

Wynehamer vs. People, 13 N. Y., 378, 433.
Walker vs. O. C. & N. R. R. Co., 103 Mass., 10, 14.
People vs. Kerr, 37 Barbour, 257, 399.
Nevins vs. City of Peoria, 41 Ill., 500.
Pumpelly vs. Greenbay Co., 13 Wallace, 177.

I insist that this law does take the property of this company. A substantial restriction of the right of user may not annihilate all the owner's rights in the property, but it is none the less true that a part of the property is taken. To take a part is as much forbidden by the Constitution as to take the whole. As this case stands before the Court, the simple question is: Is the owner deprived of any part of his property when he is deprived entirely of its beneficial use?

In the Court below it was insisted, in the broadest terms, that the power of the State over this corporation and its property is unlimited; that this company, by accepting its charter, under the reservation contained in the Constitution, had contracted that the State should have an unlimited power over the company and its property; that the Legislature might repeal the charter and take away all rights of the company in any manner, and that such power included all other rights to control the use of the property.

There are two answers to this proposition:

First.—The repeal of the charter would leave the company the right to dispose of its property or to remove so much of it as is moveable from the State. This law as stated in the bill, compels the company, under heavy penalties, to continue the

use of the property in the State without compensation. The company may well have had regard to the first contingency when the contract was made and have been willing to accept the same without agreeing to be subject to the greater risk and loss implied in the other.

Second.—If the State repeals the charter, the property remains in the company, and the State can neither take nor grant the road to another. The only effect would be to deprive the people of the use of the road entirely, while, were the "Potter law" to be enforced, the State retains the railroad and compels the company to operate it without compensation.

When the stockholders of this company were considering the question whether they would accept the charter and invest their money in the State of Wisconsin, they might well have reasoned thus: The State may repeal the charter, but, in so doing, she would deprive her people of the benefit of this railroad, which it is certain she will never do without some gross misconduct on our part; and so we will not be deterred from accepting the charter because the State may rescind the contract, for the manifest interest of the State will prevent such an act. But, if the proposition had been that the State might deprive the owners of this railroad of all beneficial use of the property without compensation to the company, and still compel it to operate it for the benefit of the public, the answer would have been very different. The answer to such a proposition may be found in the utter paralysis which has come upon all railroad enterprises in Wisconsin—no matter how promising and flourishing they were before the passage of this

law—and in the fact that the passage of the law and the adjudications of the courts under it have utterly ruined the credit of American railroad corporations in the money markets of the world—a fact which is abundantly shown by the consular reports to the State Department.

III.

The clause in the State Constitution authorizing the Legislature to alter the charter, it is claimed, is a part of the contract. Equally so is the clause in the same Constitution that "private property shall not be taken for public use without just compensation." This company never contracted that its property should be taken for public use without compensation. Therefore the question is limited to this: Does this law take the property of the company? and, taking the statements of the bill in this case to be true, as they stand admitted of record, this question only remains: Is it depriving this company of its property to take from it, permanently, all beneficial use thereof?

Two other points have been made by counsel not appearing in this case:

First.—That the railroad is a highway and the State has a prerogative right to control highways; consequently, it was part of this contract that the State should have the right to control it. A sufficient answer—but not the only one—to this proposition, is the fact that the State never had the prerogative right, nor any other right, to compel one person to

transport the property and person of another along any highway at less than a reasonable compensation, if at all. The right to construct a railroad, or any other road, and throw it open to the free use of the public, is one thing; the right to compel one man to transport the person and property of another over a public highway and ensure the safety of both is wholly another; and no such right was ever claimed by any constitutional government by virtue of a prerogative right or any other right.

Second.—It has been insisted that the railroad and its equipment and appurtenances became the property of the State—"a part of the public domain, farmed out for adminis-"tration." If it did thus become a part of the public domain, it must have been by contract. The rails, ties, locomotives, and cars run over the property of the stockholders; and if the property passed to the public, it must have done so by virtue of a contract to that effect implied in the fact that this property had been put into and upon a railroad. That no such contract can be implied from the language of the charter is decided in the following cases:

The State Freight Tax, 15 Wallace, 257. In that case this Court says:

"We concede the right and power of a State to tax the "franchises of its corporations, and the right of the owners of "artificial highways, whether such owners be the State or the "grantees of franchises from the State, to exact what they "please for the use of their ways. That right is an attribute "of ownership."

In the Delaware Railroad Tax case, 18 Wallace, 225, in speaking of a railroad charter, the Court says:

"The contract is clearly protected from legislative inter-
"ference, whether the public is interested in the exercise of
"its franchise, or the charter be granted for the sole benefit of
"its incorporators."

In the case of the Tuckahoe Canal company vs. Tuckahoe Railroad Company, 11 Leigh, 42, speaking of a canal constructed by a corporation under a charter from the State, the Court, by Tucker, C. J., says:

"The canal is their own property, and property necessarily
"implies a right in the owner to the exclusion of all others."

IV.

But the precise words of the charters negative the idea that this road and its equipment were to become a "a part of the public domain." In the charter of the Wisconsin and Superior R. R. Co., one of the constituent parts of this company's road, these words are used: [The Company is authorized] "to purchase and manufacture *and own* rails, chairs,
"spikes, engines, cars, tenders and all other things necessary
"or useful for the construction or operation of a railroad, and
"to sell the same." That is very singular language to convey the idea that all these things were to become a "part of the public domain." In the act of March 8th, 1862, passed after the consolidation, this language occurs: "And there is

"hereby conferred upon the said Chicago and Northwestern "Railway Company all rights, privileges, power and authority "contained in the charter of said railway company, or in the "charter of the Chicago, St. Paul and Fond du Lac and the "Wisconsin and Superior Railroad Companies, to which the "said Chicago and Northwestern Railway Company is the "successor." I think it fair from this grant to affirm that this road and its equipment are owned by the railroad company and not by the State. I submit, therefore, that, upon the admitted facts stated in this record, the "Potter Law" does deprive the railroad company of property which it owns, without just compensation:

V.

But it also deprives the creditors of the company of the security which they had received for their money loaned for the construction and equipment of this road. If the road can not be operated under the law so as to yield a revenue sufficient to pay interest upon its bonds and operating expenses, as is alleged in the bill and admitted by the demurrer, the road is worthless, and the security which its creditors held is destroyed. This is precisely the principle declared by Mr. Justice Miller in the case of the United States vs. The Louisville and Portland Canal Co. The opinion is not yet reported, but it was printed at length in a letter from the Secretary of War to Congress, transmitting papers relative to the canal at the falls of the Ohio river, December 2d, 1872. The case was this: On the 12th of June, 1825, the Kentucky Legislature chartered a corporation by the name of the Louisville

and Portland Canal Company, to construct a canal around the falls of the Ohio river, with the right to levy tolls on vessels passing through the canal. The tolls collected under the limit of the charter granted by the State yielded such a revenue beyond what was necessary to keep the canal in repair, that, by the joint legislation of the State and of the United States, and the consent of the individual incorporators, a plan was adopted to make the canal free, except so far as it might be necessary to keep it in repair. The stockholders accepted this legislation. This plan was so far carried out that, in the year 1855, all the shares other than those held by the United States had been bought in, except five shares left purposely in the hands of individuals to qualify them as directors. June 1st, 1872, Congress made an appropriation as follows: "For the continuing of the work upon the canal "at the falls of the Ohio river, $300,000; and the Secretary "of War is hereby directed to report to Congress, at its next "session, or sooner, if practicable, the condition of said canal, "and the provisions necessary to relieve the same from "incumbrance, with a view to such legislation as will render "the same free to commerce at the earliest practicable period, "subject only to such tolls as may be necessary for the super- "intendence and repair thereof, which shall not, after the "passage of this act, exceed five cents per ton." The officers of the United States proceeded to use the money as indicated in the appropriation, but were resisted by the officers of the corporation, the officers of the canal company maintaining that a due regard to their duty to their bondholders and other creditors of the corporation forbade them from accepting the appropriation, either expressly or by such consent as inaction

would imply, because, by so doing, they would accept that portion of the act which reduced the tolls to five cents per ton, which would not yield a revenue sufficient to pay the obligations of said company. The United States filed a bill against the company, to enjoin them from interfering with the work. The application was made to Mr. Justice Miller for the injunction. In giving his opinion he uses this language: "There are three parties interested deeply in this trust, and "in the manner in which its duties shall be discharged, which "I name in order of the superiority of their claims, rather "than of their merits:

"*First.*—The holders of bonds secured by the mortgage "authorized and placed under the sanction of the Legislature "of Kentucky and of the Congress of the United States;

"*Second.*—The United States, the holder of all the stock "in the corporation, expending a million of dollars besides for "the benefit of the canal; and

"*Third.*—The public, the community to whose use, free of "all charges but those necessary to keep it in operation, it has "been solemnly dedicated by the Legislature of Kentucky, by "the Congress of the United States, and by the action of the "corporation itself.

"As regards the first of these, I have no hesitation in "expressing my entire conviction that the bondholders have a "lien upon the revenue of the canal, and a right to insist "that the corporation shall protect these revenues to the "extent necessary to make entirely safe the payment of their

"debt and its accruing interest, and that until that debt is "paid, or the mortgage satisfied, or otherwise discharged with "the consent of these bondholders, this right of theirs remains "with the corresponding duty of the directors of the corpo- "ration.

"I am satisfied that the president and directors are honest "in their belief that acquiescence on their part in the "expending of this appropriation on the canal would bind "them legally as an acknowledgment of the Government "limitation of the toll, which would be a violation of their "official duty.

"If this construction of the statute be correct, then I have "no hesitation in saying that that part of it which so limits "the toll is void, for the plain reason that it is a legislative "attempt to destroy vested rights, and a taking of private "property for public use without due compensation."

The same principle is declared in the case of McCracken vs. Hayward, 2 Howard, 618, from which I quote:

"In placing the obligation of contracts under the protection "of the Constitution, its framers looked to the essentials of "the contract more than to the forms and modes of proceeding "by which it was to be carried into execution; annulling all "State legislation which impaired the obligation, it was left "to the States to prescribe and shape the remedy to enforce "it. The obligation of a contract consists in its binding force "on the party who makes it. This depends on the laws in "existence when it is made; these are necessarily referred to

"in all contracts, and forming a part of them as the measure "of the obligation to perform them by the one party, and the "right acquired by the other. There can be no other stand- "ard by which to ascertain the extent of either than that "which the terms of the contract indicate according to their "settled legal meaning. When it becomes consummated the "law defines the duty and the right, compels one party to "perform the thing contracted for, and gives the other a right "to enforce the performance by the remedies then in force. "If any subsequent law affect to diminish the duty, or impair "the right, it necessarily bears on the obligation of the contract "in favor of one party to the injury of the other; hence any "law which in its operation amounts to a denial or obstruction "of the rights accruing by a contract, though professing to "act only on the remedy, is directly obnoxious to the prohibi- "tion of the Constitution."

The same principle is declared in the case of Bronson vs. Kinzie, 1 Howard, 311.

If the law in question is enforced the contract which this company has made with its creditors becomes incapable of enforcement.

VI.

The State of Wisconsin also, by special act, authorized the companies which then owned that portion of this road located in the State of Wisconsin to contract with the owners of that portion of the road which is in the State of Illinois, [see act of March 14, 1859,] to consolidate their respective roads and

franchises, and the contract with the Illinois corporation is that if it will merge its property with that of the Wisconsin corporation, the united corporation should have all the privileges, powers, authorities and capacities acquired by the purchasers of the Chicago, St. Paul and Fond du Lac Railroad, or possessed by that company by virtue of any law of Wisconsin, Illinois or Michigan, among which powers was the right of the Chicago, St. Paul and Fond du Lac Railroad Company, in Illinois, to fix its rates of fare and freight. The Illinois company surrendered its franchises and property under that contract. The "Potter Law" invalidates that contract and virtually deprives the Illinois corporation of its property without compensation, and this it does by destroying the contract made in pursuance of law.

The taking of this company's property, or rendering it valueless, was not necessary. The common law would afford an adequate remedy for extortion by the company, or, if it would not, a statute which should punish the company for exacting unreasonable or unequal rate of compensation for the transportation of persons and property, would fully protect the public and still leave to the company the beneficial use of its property.

I submit this case to the Court with this suggestion: The owners of this property have invested their money in this railroad upon the faith that they should derive some reasonable return for its use. As shown by the record they can not secure such return under this act. The property has been so placed that it must be used where it is or become compara-

tively worthless. If this property is to be controlled by men who have no practical knowledge concerning it, nor any means of forming an accurate judgment of what is a fair compensation for its use, under an inflexible tariff of rates incapable of being adjusted to the varying circumstances of the time, it will be worthless. This is demonstrated by the fact that the passage of this act has caused the property to depreciate millions in value and has ruined the credit of every railroad enterprise in the State. The loss in such an event will not fall solely upon the stockholders of this corporation; it will fall also upon the people of the State who can not dispense with railroads, and who must pay for the risk incurred by those who invest their money in such enterprises in the State of Wisconsin, and it will furnish an example unparalleled in modern history of the folly of depending upon the good faith of a people who make the most sacred rights of property subservient to partizan and personal aggrandisement, and it will add new point and force to the language used by this Court in the case of Loan Association vs. Topeka, 20 Wallace, 662:

"It may well be doubted if a man is to hold all that he is "accustomed to call his own, all in which he has placed his "happiness, and the security of which is essential to that "happiness, under the unlimited dominion of others, whether it "is not wiser that this power should be exercised by one man "than by many."

B. C. COOK,
Of Counsel for Appellant.

THE POTTER ACT AT WASHINGTON.

SINCE our last article on Wisconsin Railroad Acts was written, the Supreme Court of Wisconsin has decided the Railway Injunction suits,[1] in which the Attorney-General of Wisconsin prayed for an injunction upon the railroad companies defendant, forbidding them to disobey the Potter Act. The court affirmed the constitutionality of that act, and ordered the injunction to issue.

Chief Justice Ryan pronounced the opinion, which is very diffuse, filling fifty pages of fine type in its pamphlet issue. It is too discursive for detailed criticism at this time, and we can state only its main points. The court holds that the reserved power in the Wisconsin Constitution — "All general or special laws enacted under the provisions of this section" [on Corporations, Article XI. 1] "may be altered or repealed by the legislature, at any time after their passage" — enters into all charters formed under it; that although the rule in the *Dartmouth College Case* must be obeyed, that reservation excludes the rule from any application to corporate charters in Wisconsin, and restores to the state all its otherwise inherent authority over its own corporations, and gives it absolute power over the franchise.

"By force of the constitutional power reserved, and of the uniform construction and application of it, the rule in the *Dartmouth College Case*, as applied to corporations, never had place in this state, never was the law here. The state emancipated itself from the thraldom of that decision in the act of becoming a state; and corporations since created here have never been above the law of the land. Subject to this reserved right, and under the rule in the *Dartmouth College Case*, charters of private corporations are contracts, but contracts which the state may alter or determine at pleasure. . . . The material property and rights of corporations should be inviolate, as they are here; but it comports with the dignity and safety of the state that the franchises of corporations should be subject to the power which grants them; that corporations should exist as the subordinates of the state, which is their creator, *durante bene placito*."

"This is a question of state law, not of federal law. We give full scope to the Federal Constitution as interpreted by the federal courts,

[1] *Attorney-General* v. *The Chicago & North-western Railway Co.*; *Same* v. *The Chicago, Milwaukee, & St. Paul Railway Co.*

but we stand clearly outside of both. This question could be brought within the Dartmouth College rule, not by interpretation of the Federal Constitution, but by interpretation of the state constitution only. That is our function. We accept the construction of the Federal Constitution as the federal courts give it; but we give construction to our own constitution for ourselves. And there we might well rest."

The court remark incidentally that it is unnecessary to discuss the question whether the defendants have, as an attribute of ownership, a right to take toll, as intimated by Mr. Justice Strong in *State Freight Tax Case*, 15 Wallace, 232, 278, independent of any franchise to take it.

"They certainly could not have a right to exact what they might please. But the question is not here, *because these corporations accepted a franchise to take toll, and must be held to take it under the franchise.* . . . It was said that chapter 273 [the Potter Act] violates the rights of property of these defendants. We cannot perceive that it does. Whether it will lessen the income of their property we cannot foresee; we only know that it does lessen their rates of toll. But it does not wrongfully touch their property. As far as the franchise is to be considered property, it was subject to this very limitation; *and the limitation is the exercise of a right over it which does not violate it.* The right of limitation entered into the property and qualified it. And the act does not at all meddle with the material property, distinct from the franchise. It acts only on the franchise, not at all upon the material property. And it is sufficient to say that they acquired the material property as distinct from the franchise, subject to the alteration of the franchise under the reserved power. That was a condition under which they chose to hold their property; and they have no right to complain when the condition is enforced. Their rights in their material property are inviolate, and shall never be violated with the sanction of this court. But they are no more violated by this act and its enforcement than by the foreclosure of a mortgage or ejectment by paramount title. It is a right over property which is enforced, not a wrong to right in property."

Upon this principle, the court would doubtless hold that an act which forbade a corporation, owning a cotton-mill, to make cloth with their machinery except for sale at half cost, under penalty, upon their employees, of fine and imprisonment, would be constitutional, if the act only preserved their title to the land and buildings unimpaired. No private property would be taken without compensation. Their ownership of the factory and machinery

would be sacredly guarded by the court. The act would only touch "a right over property" reserved in their franchise. No wrong would be done to any "right in property;" for the court would uphold them in maintaining trespass *quare clausum* against anybody who trod down their grass. The act would merely regulate their mode of using their property; and it is very proper for the state to do this, since it allowed them to exercise the power of eminent domain in flowing the adjoining meadows to make their water-power. It is true the farmer received from the company all that a jury of his neighbors thought the meadows were worth; but that is wholly immaterial, of course, as to the right of "the creator over its creature."

The court are surprised that anybody should think real rights of property affected by this statute.

"It was repeated with a singular confusion of ideas, and a singular perversion of terms, that the provisions of this chapter amount to an act of confiscation; a well-defined term in the law, signifying the appropriation by the state to itself for its own use, as upon forfeiture, of the whole thing confiscated. It was denounced as an act of communism. We thank God that communism is a foreign abomination without recognition or sympathy here. The people of Wisconsin are too intelligent, too staid, too just, too busy, too prosperous, for any such horror of doctrine, for any leaning toward confiscation or communism. And these wild terms are as applicable to a statute limiting the rates of toll on railroads, as the term 'murder' is to the surgeon's wholesome use of the knife to save life, not to take it. Such objections do not rise to the dignity of argument. They belong to that order of grumbling against legal duty and legal liability which would rail the seal from off the bond. They were not worthy of the able and learned counsel who repeated them, and are hardly worthy even of this notice in a judicial opinion."

The ideas of the court appear somewhat mixed in this dignified reproof of the grumblers. The learned judge apparently overlooks the fact that the patient, in this instance, sings out "murder" under the surgeon's knife because, not being at the best very vigorous, he does not want his own legs cut off in order to fatten his neighbor's pigs with them. The surgery is practised, in this case, to save some other than the patient's life, and the patient naturally objects to the operation.

In disposing of the argument that the Potter Act is not uniform throughout the state, "as required of general laws under the con-

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In disposing of the argument that the Potter Act is not uniform throughout the state, "as required of general laws under the con-

stitutional amendment of 1871," they say, "We sustain and apply this act as an alteration of the special charters of these defendants;" and they hold the provisions regulating tolls to be "valid amendments of the special charters of these defendants, obtained from the state under the constitution as it stood before the amendment of 1871," and say it is unnecessary for the defendants to assent to the amendments, because they bind the corporations without acceptance.

One of the charters before the court was a territorial charter, and granted before the constitutional "reserved power" existed. In reference to this charter, the court say, —

"And here again we think that the question of the right to take tolls, without a franchise to take them, does not arise, because the legislature has given, and the corporation has accepted, a franchise to take them. Whatever right there might have been outside the franchise is merged in the franchise. Both parties are bound by the franchise. Viewed as a contract, the franchise is the written agreement between the parties on the subject. Had we been able to agree with the defendant's counsel that the right to take tolls is not derived from the franchise, but is, in the language of Mr. Justice Strong, an attribute of ownership, we are inclined to think that we might have ruled this point differently; but we have to do here with the right under the franchise, not with a right which might have existed without the franchise. . . . The right of the corporation here to take tolls at discretion being thus fixed by express franchise in their charter, there seems to us to be no room for doubt that, viewing the charter as a contract, the franchise is a positive grant to take tolls in the manner and to the extent prescribed by it, subject to such judicial construction and control as it may bear; and is a vital part of the contract within the authorities."

"We are not considering the charter as a mere statute. We are considering it, in obedience to the Dartmouth College rule, as a contract. We are not giving our own views of its effect. We are looking at it in the mirage of federal construction."

The reasoning of the learned judge is somewhat peculiar. Without any franchise the defendants possess, "as an attribute of ownership," the right to charge compensation for the use of their property; but because, *ex abundanti cautela*, they obtain from the state in their charter an express *contract and warranty* that they shall have that right, and exercise it with the positive assent of the state, and subsequently the state chooses to repu-

diate that contract, they lose the right *which would remain in full force if the state, unfortunately, had not expressly assented to it, and solemnly contracted that it should remain unimpaired.* If the charter had been silent, they would have been safe; but because the state guaranteed them in an executed contract, the state acquires the power, by voluntary rescission of that contract, to annihilate the original "attribute of ownership."

This doctrine can hardly be attributed to the "mirage of federal construction," unless that mirage is caused by the peculiar condition of Wisconsin atmosphere, and the singular refraction which affects the eyes of the court when they look at the decisions of the Supreme Court of the United States. The "contract" is binding only on one party, a sort of "heads I win, tails you lose" bargain. The charter absorbs all previous rights, so that the "attributes of ownership" are swallowed up in it; and then the "reserved power" allows the state to swallow the charter, "attributes of ownership," and every thing but the iron rails. Substantially, the learned judge insists that the franchise is a contract with the state which binds the corporation, and in which the corporation has merged all its rights; but that the state is wholly free to take away all those rights, and to require the corporation to perform all the duties which it implies. He insists that the franchise is at once a valid contract as to its obligation on the corporation, but a mere revocable license as to the state. And this astonishing result is attained through the "reserved power" clause.

But the court, notwithstanding its sound ideas about grumbling, then indulges in the following language:—

"Considering this matter of purely state law and state polity, we are sitting *in vinculis*, bound by an interpretation of the prohibition in the Federal Constitution, on a subject with no federal relation, which we think it ought not to bear, and which, it is admitted, it was not intended to bear, but which, while it stands, emasculates state authority over state corporations. We are sitting on this question of state law and state polity, not so much as the Supreme Court of Wisconsin as an inferior federal court; and we are bound on this subject to rule, not as we think, but as the Federal Supreme Court thinks. *The adjudications of this court on state law and state policy, having no possible relation to federal law or federal policy, have been frequently overruled by that court, without excuse found in the Federal Constitution.* We do not mean to give an opportunity now, with excuse. On this point we admit, and defer to their authority."

They therefore hold that a corporation organized under a territorial charter, accepted before the adoption of the state constitution, was protected under the United States Constitution against the modification of its charter by the new law.

In conclusion the court say: —

"We have held that here is positive violation of positive public law, to positive public injury, and that we have jurisdiction of this writ, as a prerogative writ, to restrain it. There is no room for discretion. The duty is positive *ex debito justiciæ*. The discretion which we were urged to exercise would be discretion to permit the violation of the laws which we sit here to enforce."

They therefore ordered the injunction to issue, but required the Attorney-General to dismiss his informations in the nature of *quo warranto*, as he should not have both remedies at once.

Upon the issue of these injunctions, the railroad companies conformed to the order of the court, and the legal contest ceased in Wisconsin. The curtain will rise upon the last act of the drama in Washington, when the appeals from the Circuit Court of the United States for the Western District of Wisconsin come on for argument before the Supreme Court of the United States. An effort was ineffectually made to advance them on the docket in October; but it was then said they might be heard in the present month.[1]

Commending this precedent in chancery practice to the special attention of the friends of prohibitory liquor legislation, as an additional screw upon the rumsellers where they may be found "in positive violation of positive public law, to positive public injury," and suggesting to the friends of virtue generally that a comprehensive injunction upon all wrong-doers may be a good way to forestall the criminal courts of their business in fines and penalties, we will consider how the Potter Act will stand when it is brought before the bar of the great tribunal in Washington.

What is the Potter Act in fact and practical working? Venturing, with all due submission, to differ from the learned Chief Justice of Wisconsin, we affirm that it is, in effect, whether viewed as a sweeping amendment of all the special railroad charters in the State of Wisconsin or as a general law, —

[1] No. 459, *Piek et al.* v. *The Chicago & North-western Railway Co. et al.*; No. 482, *Lawrence et al.* v. *Paul et al.*

First, An unprecedented system of discrimination and unequal legislation, gigantic in its effect. This would be plain enough if this law continued in force ten years. What business man on the roads in Class C could live, when he had to pay one-third more freight than his rival on Class A? All the discrimination against localities which has ever been charged upon all the railroads, is insignificant in comparison with the oppression this law heaps upon the people of Wisconsin, by favoring great belts of country at the expense of other towns and counties. Its unequal tariffs on railroad companies are of trivial importance compared with its monstrously unfair, local favoritism. If it were preserved unchanged for ten years, it would kill the business of towns now flourishing, depreciate farms, and wellnigh make whole counties deserted. The margins of profit in business are altogether too small to make business possible to be done at such odds as would exist along all the railroads in Classes B and C. It is class legislation, grossly unequal in its bearing upon people and corporations alike.

Second, It is, in common acceptance of terms, substantial confiscation, the technicalities of the Supreme Court of Wisconsin to the contrary notwithstanding. It requires the railroads to carry freight and passengers. It takes away, in principle, the right to charge any compensation therefor; for the precise rates at present established are immaterial. In the terse language of Judge Hoar, "If this law is constitutional, I can see no reason why a law compelling the railroad company to carry passengers gratuitously, or to pay them for riding in the cars, would not be." It establishes a principle, which takes from the owners all possibility of using their propety to advantage; and that is, in common language, confiscation.

Such being the actual effect of the Potter Act, it is, for our purpose, entirely unimportant that its operation during the past few months has made certain its speedy repeal or essential modification this winter. The principle involved is vastly more important than the practical working of this particular law, which evidently will be so short-lived; and it is only in its purely legal aspect that we consider it here.

Some of the questions which were open at first, are now closed by this decision of the Supreme Court of Wisconsin, affirming the constitutionality of this act under the constitution of that state.

Resting their decision upon "the reserved power" to alter and repeal all charters, and treating the Potter Act as merely an amendment of special charters, not as a general law, they have conclusively established, before the Supreme Court and all other tribunals, its validity under the Constitution of Wisconsin, whether their decision be right or wrong.[1] Suggestions, therefore, as to the unconstitutionality of unequal and class legislation upon principles of general constitutional law, become immaterial now. They have been rejected in the only forum where they could be effectively urged. The Supreme Court will not revise a state statute on any ground of justice, policy, or consistency with a state constitution, but will only inquire whether it violates the Constitution, treaties, or laws of the United States.[2]

Its validity, also, so far as the prohibition against taking private property for public use without just compensation therefor, which is found in the fifth amendment to the Constitution of the United States, and in Art. I. 13, of the Constitution of Wisconsin, is concerned, can no longer be denied.

It never was an open question under the fifth amendment. The decision of Chief Justice Marshall in *Barron* v. *Mayor of Baltimore*[3] defined the limitation of that clause forty years ago: —

> "The provision in the fifth amendment to the Constitution, declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the States."

That construction has since been emphatically affirmed in *Withers* v. *Buckley*,[4] and is settled and familiar law.

The only questions which are open for discussion at Washington seem to be the validity of this enactment, —

First, under the prohibition upon the states to pass any law impairing the obligation of contracts (Art. I. 10), and

Second, under the provision that no state shall "deprive any person of life, liberty, or property without due process of law" (Amendment XIV. 1).

The first question involves not only the topics so fully and

[1] *Webster* v. *Cooper*, 14 How. 488.
[2] *Carpenter* v. *Pennsylvania*, 17 How. 456; *Elmendorf* v. *Taylor*, 10 Wheat. 159.
[3] 7 Pet. 243. [4] 20 How. 84.

ably discussed in the opinions and arguments noticed in our last article, but also the effect of the Ordinance of 1787 upon the "reserved power" of the Wisconsin Constitution, and the Potter Act. The force of the Ordinance of 1787 as the organic law of the North-western Territory, in the states which have been formed out of that territory, is still an open question, and we hope that it will now be finally adjudicated.

The Ordinance contains these words in the *quasi* preamble to the "Bill of Rights" in its famous six articles: —

"And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; *to fix and establish those principles as the basis of all laws, constitutions, and governments which for ever hereafter shall be formed in the said territory;* to provide also for the establishment of states and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original states, at as early periods as be consistent with the general interest; it is hereby ordained and declared by the authority aforesaid, that the following articles shall be considered *as articles of compact between the original states and the people and states in the said territory, and for ever remain unalterable, unless by common consent,* to wit:"

Then come the provisions for protecting civil and religious liberty, trial by jury, and the like, and afterwards follow these words: —

"Article II. . . . *No man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land;* and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. *And in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements,* bonâ fide *and without fraud previously formed.*"

The Ordinance for the government of the North-western Territory was drawn by Nathan Dane of Massachusetts, one of the great lawyers of his time, the author of Dane's Abridgment, and the founder of the Dane Professorship in the Harvard Law School. It was reported to Congress on July 11, 1787, and passed July 13, and published in *The Pennsylvania Herald*, at Philadelphia, July 27. On August 28, Mr. Rufus King moved

in the convention which was then framing the Constitution of the United States, "to add, in the words used in the Ordinance of Congress establishing new states, a prohibition on the states to interfere in private contracts." Out of this motion grew the provision restraining legislatures from passing any law impairing the obligation of contracts, which was finally adopted.[1]

From the debates it appears that the prohibition against *ex post facto* laws, when first adopted in convention, was supposed to prohibit "*retrospective interferences*" in private contracts; but that, when subsequently the limitation of the phrase to criminal cases was explained, no alteration was made in those words, although alteration was both advocated and opposed. Mr. Curtis says: —

"The idea of a special restraint on legislative power for the purpose of rendering inviolate the obligation of contracts, appears to have originated with Nathan Dane, the author of the Ordinance of 1787, . . . and it first appears in our national legislation in the Ordinance of 1787. . . . In it, Congress had provided a system of fundamental law, intended to be of perpetual obligation, for new communities, whose legislative power was to be moulded by certain original maxims of assumed justice and right. The opportunity thus afforded for shaping the limits of political sovereignty according to the requirements of a preconceived policy, enabled the framers of the ordinance to introduce a limitation which is not only peculiar to American constitutional law, but which, like many features of our institutions, grew out of previous abuses.

"In the old states of the Confederacy, from the time when they became self-governing communities, the power of a mere majority had been repeatedly exercised in legislation, without any regard to its effect on the civil rights and remedies of parties to existing contracts. The law of debtor and creditor was not only subjected to constant changes, but the nature of the change depended, in many of the states, upon the will of the debtor class, who formed the governing majority. So pressing were the evils thus engendered, that, when the framers of the ordinance came to provide for the political existence of communities, whose institutions they were to dictate, they determined to impose an effectual restraint on legislative power; and they accordingly provided, in terms much more stringent than were afterwards employed in the Constitution, that no law should have effect in the territory which should, in any manner whatever, interfere with or affect private contracts or engagements previously made."[2]

[1] Madison Papers in Supp. to Elliott's Debates, Vol. V. 485, 488, 545, 546.

[2] 2 Curtis Hist. of U. S. Constit. 365

After the adoption of the Constitution of the United States, Congress, by act approved Aug. 7, 1789,[1] continued the Ordinance in force, and modified some of the conditions relating to temporary government.

It has been said in Indiana and Michigan, and in one District Court of the United States, that the Ordinance of 1787 was superseded in each of the states formed out of the North-west Territory by the adoption of a state constitution and admission to the Union.[2] But, to borrow the words of Mr. Justice Cooley in his admirable work on Constitutional Limitations, "the weight of judicial authority is probably the other way."[3]

The Supreme Court of Ohio in 1832 emphatically affirmed its validity as underlying their own constitution.

Whether the legislature of Ohio could pass a law authorizing the obstruction of navigable waters leading into the Mississippi and St. Lawrence, which, by the Ordinance of 1787, were declared for ever free, was directly in issue in *Hogg* v. *Zanesville Canal & Manufacturing Company*.[4] The court declared that the Ordinance was in force, and prohibited such exercise of legislative power, saying of the provisions as to these navigable waters, —

"This portion of the Ordinance of 1787 is as much obligatory upon the State of Ohio as our own constitution. In truth, it is more so; for the constitution may be altered by the people of the state, while this cannot be altered without the assent both of the people of this state, and of the United States through their representatives. It is an article of compact; and, until we assume the principle that the sovereign power of the state is not bound by compact, this clause must be considered obligatory, . . . a right derived not from the legislature of Ohio, but from a superior source."

The same clause came before the Circuit Court of the United States in Ohio six years later, and Mr. Justice McLean and Judge Leavitt, in very elaborate opinions, expressed the same view. The Ordinance is fully considered, and *Spooner* v. *McConnell*[5] may be fairly called the leading case on the subject. Mr. Justice McLean says: —

[1] 1 Stat. at Large, 50.

[2] *La Plaisance Bay Harbor Co.* v. *Munroe*, Walker's Ch. 155 (1843); *Depew* v. *Wabash & Erie Canal*, 5 Indiana, 8 (1854); *Woodbourn* v. *Kilbourn Manuf. Co.*, 1 Abbott's U. S. Rep. 158 (1867).

[3] Cooley on Con. Limit. (1874), 26, note.

[4] 5 Ohio (Hammond), 410.

[5] 1 McLean, 337 (1838).

"That this ordinance was obligatory in all its parts at the time of its adoption, no one can doubt, and the only inquiry now is, whether, by the adoption of the Federal Constitution, the constitution of the state, or by any other means, it has been superseded or annulled in whole or in part. The change from a territorial government to that of a state necessarily abolished all those parts of the ordinance which gave a temporary organization to the government, and also such parts as were designed to produce a certain moral and political effect. Of the latter description were those provisions which secured the rights of conscience, which declared that education should be encouraged, that excessive bail should not be required, &c."

"And it may be admitted that any provision in the state constitution must annul any *repugnant* provision of the ordinance. This is within the terms of the compact. The people of the state formed the constitution, and it was sanctioned by Congress; so that there was the 'common consent' required by the compact to alter or annul it."

"*But in regard to the great question in this case, as to navigable waters, the state constitution purports to make no alteration; and, if the ordinance in this part be annulled, it must be done by implication.* . . . It is a well established principle that no political change in a government annuls a compact made with another sovereign power or with individuals. The compact is protected by that sacred regard for plighted faith which should be cherished alike by individuals and organized communities. . . . This compact was formed between political communities and the future inhabitants of a rising territory, and the states which should be formed within it. And all parties who became inhabitants of the territory made themselves parties to the compact. And this compact so formed could only be rescinded by the common assent of those who were parties to it."

After then urging with great force that the provision for admitting new states "upon an equal footing" with the old states does not mean that the new states shall exercise the same powers in the same modes with the old states, the learned judge declares this condition satisfied if the new state is admitted —

"Subject to such provisions in their fundamental law as they shall have sanctioned. . . . The states are equal, inasmuch as each has by its own voluntary will established its own government, and has the power to alter it. This is the principle on which the state governments are established, and consequently they all stand upon an equal footing. . . . *If there is nothing in the constitution of the state which is repugnant to the compact in the ordinance in relation to navigable waters, and the parties to the compact have in no form annulled it, and it is not inconsistent with that equality*

which the State of Ohio claims with the original states, it follows that this compact is in full force, and is a subject of judicial cognizance.

"The sixth article of the compact prohibits slavery. The Constitution of the state also prohibits it. Now, notwithstanding this inhibition in the constitution, the people of the state in convention might so alter the constitution as to admit slavery. But does not the compact prevent such an alteration without the consent of the original states?

"If this be not the effect of the compact, its import has been misconceived by the people of the state generally. They have looked upon this provision as a security against the introduction of slavery, *even beyond the provisions of the constitution. And this consideration has drawn masses of population to our state, who now repose under all the guaranties which are given on this subject by the constitution and the compact.*

"The provision of the compact in regard to slavery rests upon the same basis as that which regards the navigable waters within the state. They are both declared to be unalterable, except by common consent."

The provision in the Ordinance as to the inviolability of private contracts "rests upon the same basis" as the provisions about slavery and about navigable waters.

Because the provision as to contracts in the Constitution of the United States is less broad than the provision in the Ordinance of 1787, is the protection of the Ordinance against "retrospective interferences" with private contracts thereby withdrawn from the North-west?

"Some of the provisions," says Mr. Justice McLean, "of the compact contained in the ordinance were subsequently guaranteed by the Federal Constitution; and, so far as this guaranty extends, it may be considered *practically* as superseding the ordinance. This remark applies to that provision of the Constitution which declares that the new states shall be admitted into the Union with the same rights of sovereignty as the original States, — the rights of conscience, the inviolability of contracts," &c.

The Ordinance was in force before the United States Constitution was adopted. It was a previously existing contract of the most solemn nature. Is it not itself protected under the Constitution of the United States from any impairment or alteration, except by "common consent," as is in itself provided?

The United States Constitution and the Wisconsin Constitution use the same words in their prohibition against passing "any law impairing the obligation of contracts." As to the residue of this provision in the Ordinance, there is mere silence. There is no

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The United States Constitution and the Wisconsin Constitution use the same words in their prohibition against passing "any law impairing the obligation of contracts." As to the residue of this provision in the Ordinance, there is mere silence. There is no

inconsistency, no repugnancy, between the Ordinance and the constitutional provisions; and it is only "*so far as this guaranty extends*," that Mr. Justice McLean considered the Ordinance to be even "*practically*" superseded. The Constitutions do not purport to make any alteration. If any alteration is made, it is *by implication;* and the *mere neglect* to use the larger phrase, *proprio vigore*, must be held *by implication* to confine the provision of the Ordinance to narrower limits. This view can hardly be taken of the United States Constitution without working a total repeal of the Ordinance, since mere silence in the Constitution, as to its topics, would then suffice to work that repeal. And is the adoption of the lesser phrase in the Wisconsin Constitution, which is obviously copied from the United States paper, to be allowed to work *by mere implication, without any repugnancy of meaning*, so grave a change in the organic law of that portion of the Northwest? The language of Mr. Justice McLean, which he used about the famous sixth article, and which we have in our quotation italicized, because it is here exactly applicable to the provision for inviolability of contracts, is strongly against such an assumption. That great judge held repeatedly that *implication* was not enough to repeal the provision as to navigable waters. Judge Leavitt observes in *Spooner* v. *McConnnell*, with great vigor, —

"Is it rational to suppose that Congress intended to surrender a right so solemnly secured, so important in its character, and so extensive in its operation? And is such an intention to be predicated of any action short of an express declaration to that effect? If an ordinary act of legislation cannot be repealed without the observance of the forms and solemnities requisite in its enactments, a compact declared on its face to be 'unalterable unless by common consent,' cannot be abrogated by mere implication."

The Ordinance of 1787 is printed in the Statutes of Wisconsin before its constitution, and is recognized in its courts as its organic law. The Supreme Court of Wisconsin decided, in 1864, in *Connecticut Mutual Life Insurance Company* v. *Cross*,[1] that the adoption of the constitution by the free will and vote of the people, with the assent of the government of the United States, and the subsequent admission of the state into the Union, abrogates "by common consent" the provisions of the Ordinance, "*wherever its provisions and those of the state constitution come into conflict.*"

[1] 18 Wis. 109.

The Ordinance, therefore, is recognized as law in Wisconsin by the courts of that state, *wherever there is no conflict* between its provisions and their constitution. If its late decision be interpreted indirectly as an adjudication that, since the Potter Act is upheld, the Ordinance protection over contracts is abrogated, it is to be noted that this point was not raised or argued before the court in that case; and also that, even if the adjudication were directly to that effect, it would be open to revision at Washington since the statute of Aug. 7, 1789,[1] recognizes the Ordinance and confirms it; and also that the Ordinance is itself before the Supreme Court as a "contract" sought to be impaired by the legislation of Wisconsin. Moreover, the Supreme Court of the United States may now be asked to construe the "contract" clause and the "reserved power" clause in the Wisconsin Constitution itself, and decide whether they do not impair the obligation of the great contract of 1787, which was to be for ever unalterable except by common consent, and under which corporate charters, mortgages, and bonds would all be fully protected. Unless it is held that by *implication* alone, arising merely from the adoption in the constitution of a less comprehensive but not repugnant form of words, that vigorous provision in the Magna Charta of the North-west is annulled, then those words of the Ordinance are imported into the "reserved power" clause of the Wisconsin Constitution itself; and that clause cannot be supported under the Constitution of the United States, unless it be read with a proviso. "All general laws or special acts enacted under the provisions of this section [on corporations], may be altered or repealed by the legislature at any time after their passage, *provided, however, that such repeal or alteration shall never in any manner whatever interfere with or affect private contracts or engagements*, bonâ fide *and without fraud previously formed.*"

In other words, the Ordinance was an existing contract, of the most solemn nature, at the time of the adoption of the United States Constitution. It was "for ever unalterable, unless by common consent," *first*, of the original states; and, *second*, of the people and states in the North-west Territory. Now, while the Ordinance must yield to the Constitution whenever they conflict,[2]

[1] 1 Stat. at Large, 50.

[2] *Vaughan* v. *Williams*, 3 McLean, 530.

the mere adoption of the Constitution by the original states alone could not work an alteration of the Ordinance, for they were only one of the parties whose common consent was needed; and the second party did not then exist in form to give that consent, until state after state was formed in that territory. The second party could consent only by piecemeal, so to speak, *i. e.*, through new state constitutions adopted with the consent of the representatives of the original states in Congress assembled. This is now the accepted doctrine of "common consent" in Ohio and Wisconsin, as well as elsewhere.

From this doctrine it follows, necessarily, that the mere adoption of the Federal Constitution worked and could work no change whatever in the validity of any part of the Ordinance not conflicting with the Constitution itself, but, *so far as it covered the same ground*, merely gave additional guaranty to the provisions so covered, and furnished the practical means of enforcing it, and so superseded it, to adopt the expression of Mr. Justice McLean, "practically," but not legally.

It also follows that a repugnant provision in a state constitution controls the provision in the Ordinance; and this doctrine also is accepted by the Supreme Court of Wisconsin.

Unless the "contract" clause and the "reserved power" clause are *repugnant* to the second article of the Ordinance, that article is still paramount law in Wisconsin, and the Potter Act is void.

They are not repugnant in terms; they can all stand together; and, if the construction *ut magis valeat quam pereat* prevails, the second article of the Ordinance is law in Wisconsin; for the Federal Constitution protects the contracts of states as well as of private citizens.[1]

Spooner v. *McConnell* was affirmed in *Palmer* v. *Cuyahoga County*[2] and *Jolly* v. *Terre Haute Drawbridge Company*;[3] and the validity of the Ordinance is also somewhat considered in *Doe* v. *Douglass*,[4] *Milwaukee Gaslight Company* v. *Sch. Gamecock*,[5] *Wisconsin River Improvement Company* v. *Lyons*.[6]

Spooner v. *McConnell* was not carried up, although the court, as is stated in a note to the case, "expressed a strong desire, as

[1] *Fletcher* v. *Peck*, 6 Cranch, 133; *Terrett* v. *Taylor*, 9 Cranch, 43; *Green* v. *Biddle*, 8 Wheat. 1.

[2] 3 McLean, 226. [3] 6 McLean, 237. [4] 8 Blackford, 12.

[5] 23 Wis. 144. [6] 30 Wis. 61.

the principles of the case were important to the state, that it should be taken to the Supreme Court without delay."

The construction of the first article of the Ordinance (as to religious liberty) was indirectly involved in *Permoli* v. *First Municipality of the City of New Orleans*;[1] but Mr. Justice Catron, in delivering the opinion of the court, says, "What the force of the ordinance is north of the Ohio we do not pretend to say, as it is unnecessary for the purposes of this case." The same remark applies also to the case of *Pollard's Lessee* v. *Hagan*.[2]

In *Strader* v. *Graham*,[3] which involved the question of slavery, the only point in issue was the jurisdiction of the court; and all the judges agreed that the court did not have jurisdiction of a case brought under the Ordinance of 1787, Art. VI., because that article was so incorporated into the Constitution of Ohio that the constitutional provision was substituted for the Ordinance, "and consequently all questions of freedom must arise under the constitution, and not under the Ordinance." Mr. Justice McLean, in his opinion (dissenting only as to the remarks of the Chief Justice), declares the question of jurisdiction to be the only question before the court; "and any thing that is said in the opinion of the court in relation to the Ordinance beyond this, is not in the case, and is consequently extrajudicial." Mr. Justice Catron also, while agreeing in the decision, dissents from Chief Justice Taney's language as to the Ordinance, because "our opinion might be disregarded by the state courts as *obiter*, and a *dictum* uncalled for." Remembering that this well-known case arose on the famous prohibition against slavery in the Ordinance, and was made in 1850, the year of heated controversy about the compromise measures of Congress and Mr. Webster's 7th-of-March speech, we may fairly conclude that the *dicta* of Chief Justice Taney, which drew forth such emphatic dissent from others on the same bench, will not be held to preclude argument on the force of the Ordinance north of the Ohio, whenever the question is really in issue before the court.

We are not aware that the force of the "contract" clause in the second article of the Ordinance has ever been directly adjudicated in any court; and we do not know any case in which it has ever been discussed before the Supreme Court. It is now,

[1] 3 How. 589, 610. [2] 3 How. 212, 230. [3] 10 How. 82.

however, one of the interesting questions in issue in the pending cases upon the Potter Act.

The second obvious inquiry is how the validity of the Potter Act is affected by the Fourteenth Amendment to the Federal Constitution.[1]

It may be conceded that state legislatures possess, within the scope of legislation, the imperial powers of the British Parliament, limited only by the superior constitutional law of the state and the United States. Those limitations are sufficient, however, to meet the present issue.

While it is true that a state constitution is to be regarded as a limitation on the powers of the legislature, not as a grant; and therefore that it is competent for the Wisconsin legislature to exercise all legislative powers not prohibited,[2] it is also true that individual rights do not come from constitutions, but are only protected by them. "These instruments measure the powers of the rulers, but they do not measure the rights of the governed."[3] Those rights are comprehensively included in and protected by "the law of the land," and they are now guaranteed to all persons by the Fourteenth Amendment to the Federal Constitution, for the phrase there used, "due process of law," has meant the same thing as "the law of the land," from the time of Magna Charta downwards.[4] Judge Cooley says: —

> "The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void. If the act proceeded upon the assumption that such other person was justly entitled to the estate, and therefore it was transferred, it would be void because judicial in its nature; and if it proceeded without reasons, it would be equally void, as neither legislative nor judicial, but a mere arbitrary fiat.[5] . . . The absence of such prohibition cannot by implication confer power."

The lamented Judge Curtis expressed the opinion that it was not within the field of legislation to fix and prescribe for the future what price shall be demanded for commodities or personal service, or a union of both, and that no American legislature had

[1] See *The Nation*, Oct. 29, 1874, p. 284.
[2] 10 Wis. 195.
[3] Cooley on Con. Limit. (1874) 36.
[4] 2 Instit. 50.
[5] Cooley on Con. Limit. 174.

power to compel owners of property, natural or political, to part with their property or render their personal services at their own expense and risk to the public for prices fixed by the legislature; but, if this power existed at all, it was unlimited.[1]

We maintain that this power could not be affirmed without implying the authority to take private property from one person and transfer it to another, or to distribute it among a set of persons, without due process of law. If the principle be affirmed that a railroad must be operated on a legislative tariff of prices, fixed only by legislative discretion, the use of the railroad may be entirely taken from its owners, and given to that portion of the public who choose to ride on those terms; and this would be depriving the owners of their property without due process of law. But, when this objection is made, the State of Wisconsin says: "Your rights rest only on your charters, and you agreed when you accepted your charters that the legislature might at any time alter or repeal them; and this alteration the legislature now makes under that power, reserved with your express assent in your contract with the state."

To this it may be replied: "If the legislature, one party to the contract, now seeks to alter that contract, *it can make only such alterations as fall within the scope of legislative power, and such as consist with 'the law of the land.*' It cannot deprive us of our property 'without due process of law.' Such alterations only can be made by you as are within the scope of your legislative powers, and even then such only as, at the same time, will not deprive us of our property 'without due process of law.'" And these words are defined by Mr. Justice Johnson, in the *Bank of Columbia* v. *Okely*, to be "intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."[2]

The case then stands thus. The "reserved power"-clause is imported into all charters because it is in the state constitution. But the limitation upon the exercise of that "reserved power" (existing in the law of the land and protected by the Fourteenth Amendment) is imported into that "reserved power" clause, and goes with it into the Constitution of Wisconsin, and makes

[1] Am. Law Rev. Vol. IX. p. 57. [2] 4 Wheat. 235.

part of it, and part of all charters granted under it. The contract itself, therefore, — the railroad charter, — for which the protection of the Supreme Court is sought, stipulates, in contemplation of law, that no alteration shall be made in it which will deprive the corporation of its property without due process of law.

This is all *implied* in the opinions quoted in our last article; but it may be well to express it here.

We maintain that the right to use, enjoy, and dispose of property is itself property within the protection of the Fifteenth Amendment; that to take this right from any owner is to take his property; that such taking can only be by due process of law; and that the Potter Act takes this right from the owner, but is not due process of law; and consequently impairs the obligation of a contract protected by the Federal Constitution.

That the right to use, enjoy, and dispose of property is itself property, seems too plain for argument, if it were not questioned by the Supreme Court of Wisconsin. A private right of way does not impair the land-owner's fee, but it takes away the use and enjoyment of his land. It cannot therefore be granted by legislative act, because that is not "due process of law."[1] "It is enough that some interest," says Mr. Justice Bronson, "some portion of his estate, no matter how small, has been taken without his consent. The property of A is taken without his permission and transferred to B." In *Wilkinson* v. *Leland*,[2] Mr. Justice Story says, "We know of no case in which a legislative act to transfer the property of A to B without his consent has ever been held a constitutional exercise of legislative power in any state of the Union." And to compel A to sell his property or his labor to B at any price not fixed by A, amounts clearly to a transfer of A's property to B without A's consent. "To say that this grant of legislative power includes the right to attack private property, is equivalent to saying that the people have delegated to their servants the power of defeating one of the great ends for which government was established. . . . Neither life, liberty, nor property, except when forfeited by crime, or when the latter is taken for public use, falls within the scope of the power."[3] And the same principle has been sanctioned by Chief Justice Marshall, in *Fletcher* v. *Peck*.

[1] *Taylor* v. *Porter*, 4 Hill, [1843] 140.
[2] 2 Pet. 657.
[3] *Taylor* v. *Porter*, 4 Hill, 145.

"It may be doubted whether the nature of society and of government does not prescribe some limits to legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation?"[1]

But if it were within the scope of legislation *ex vi termini* to take, without consent or compensation, private property or the right of disposition of the property, it has been repeatedly decided that to interpret "due process of law," or the "law of the land," to mean an act of legislation is absurd. Where rights of property exist, the legislature cannot say they shall exist no longer. Life, liberty, and property are put in the same category in the Fifteenth Amendment. Says Mr. Justice Comstock: —

"The true interpretation of these constitutional phrases is, that where rights are acquired by the citizen under the existing law, there is no power in any branch of the government to take them away; but where they are held contrary to existing law, or are forfeited by its violation, then they may be taken from him, not by an act of the legislature, but in the due administration of the law itself before the judicial tribunals of the state. The cause or occasion for depriving the citizen of his supposed rights must be found in the law as it is, or at least it cannot be *created* by a legislative act which aims at their destruction. Where rights of property are admitted to exist, the legislature cannot say they shall exist no longer."

That an act of the legislature is not "due process of law" is settled law in New York,[2] Pennsylvania,[3] and North Carolina;[4] and, in the Supreme Court of the United States, Mr. Justice Curtis remarked, in *Murray's Lessee* v. *Hoboken Land and Improvement Company*,[5] of a distress warrant issued by the Treasury in conformity with an act of Congress, —

"But is it 'due process of law'? The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. The article is a restraint on the legislative as well as on the executive and judicial powers of the gov-

[1] 6 Cranch, 135.
[2] *Wynehamer* v. *The People*, 13 N. Y. 378.
[3] *Norman* v. *Heist*, 5 Watts & Serg. 193.
[4] *Hoke* v. *Henderson*, 4 Dev. 15.
[5] 18 How. 272, 276.

ernment, and cannot be so construed as to leave Congress free to make any process 'due process of law' by its mere will."

It is true this construction was put, in 1855, upon the Fifth Amendment, which applied only to congressional legislation, and the Fourteenth Amendment was not promulgated till 1868. But the phrase is the same in each amendment; and this *dictum* of Mr. Justice Curtis, resting, as it does, on such a column of adjudication, may fairly be assumed to indicate the future decision of the court upon this attempt in Wisconsin to deprive corporations, without their consent, of the price, more or less, of the article they sell, viz., transportation, through alteration of an executed contract which it is not pretended can be altered except by legislative act. The judicial character of such an alteration, which implies investigation and determination of what is a *reasonable* price, is an additional obstacle to upholding such legislative alteration as due process of law; for it would seem that all alterations by legislative act under the "reserved power," which involve judicial determination of reasonableness, must fall outside the limit of legislative power.[1] In *Bartemeyer* v. *Iowa*,[2] the court do not go further in construing this part of the Fourteenth Amendment than to admit in general terms that now "it has become the fundamental law of this country that life, liberty, and property (which include 'the pursuit of happiness') are sacred rights, which the Constitution of the United States guarantees to its humblest citizen against oppressive legislation, whether national or local, so that he cannot be deprived of them without due process of law."

But material property is property in the true sense, because it possesses certain attributes, "among which are, fundamentally, the right of the occupant or owner to use and enjoy them exclusively, and his absolute power to sell and dispose of them; and as property consists in the artificial impression of these qualities upon material things, so whatever removes the impression destroys the notion of property, although the things may remain physically untouched. Nor can I find any definition of property which does not include the power of disposition and sale, as well as the right of private use and enjoyment."[3] And in the same case Mr. Justice Selden says: —

[1] *Wynehamer* v. *The People*, 13 N. Y. 378.
[2] 18 Wall. 129.
[3] Comstock, J., in *Wynehamer* v. *People*, *ut sup.*

"*Property is the right of any person to possess, use, enjoy, and dispose of a thing.* The term, though frequently applied to the thing itself, in strictness means only the rights of the owner in relation to it. A man may be deprived of his property in a chattel, therefore, without its being seized or physically destroyed or taken from his possession. Whatever subverts his rights in regard to it, annihilates his property in it. . . . To give the clause, therefore, any value, it must be understood to mean that no person shall be deprived, by any form of legislation or governmental action, of either life, liberty, or property, except as the consequence of some judicial proceeding appropriately and legally conducted. It follows, therefore, that a law which, by its own inherent force, extinguishes rights of property or compels their extinction, without any legal process whatever, comes directly in conflict with the Constitution."

The same views are adopted in *Pumpelly* v. *Green Bay Company*,[1] in reference to a taking of property for public use, which entitles the owner to compensation.

The character of charters as executed contracts, and other limitations on the "reserved power," as to impairing contracts, and changing the character, scope, or purpose of the charters, have already been so fully discussed in the arguments and opinions of the great lawyers which were quoted at much length in our former article, that their consideration here is needless. But we wish also to refer our readers to two able articles published in *The Nation* in New York, entitled respectively "The Right to Confiscate,"[2] and "How will the United States Supreme Court decide the Granger Railroad Cases?"[3] They contain valuable suggestions, and state also many of the propositions which formed the suppressed premise in the condensed argument of the opinions already referred to, with that peculiar vigor and precision which marks the style of that journal.

The recent decision in *Barings* v. *Dabney*[4] gives ground to infer that bondholders, under a mortgage which has been in any way sanctioned by the legislature, may be protected in their contracts notwithstanding the "reserved power" as to the charter, if that sanction created a trust upon which the bondholders were fairly justified in relying. *Curran* v. *Arkansas*,[5] which upheld such legislative pledges in favor of the creditors of a bank, is affirmed

[1] 13 Wall. 66.
[2] *The Nation* for Sept. 24, 1874.
[3] *Id.* for Oct. 29, 1874.
[4] 19 Wall. 1.
[5] 15 Howard, 317.

in this case; and probably any approval, direct or indirect, prior or subsequent, by a legislature upon which creditors had reason to depend, would amount to a ratification of such a mortgage within the Federal Constitution, and would entitle it to protection as a contract, whatever the decision on the main questions just discussed.

The Railway Tariff Act of Minnesota, which is also before the Supreme Court, is incidentally discussed in McElrath's Case.[1] Judge Dillon intimates in that case that there is, in his opinion, no middle ground between the absolute right of the company to fix their own compensation, and the absolute right, on the other hand, of the legislature to prescribe their compensation; but he then allowed a receiver, *pendente lite*, and without prejudice, to collect such rates as seemed necessary, without regard to the act, and reserved his final order as to the disposal of the funds collected until the validity of the act was argued before him upon a test case, which is still undecided.

The late war left the average American politician with a powerful desire to acquire property from other people without paying for it. A succession of schemes, too familiar to recapitulate here, have been tried, and, after hard struggles, have been defeated by the honest common sense of the community. We have sufficient faith in the speedy clarification of ideas, among the honest advocates of the so-called Granger laws, to feel confident that this assault upon private property will soon lose their support, and be publicly classed with the exploded fallacies of repudiation and unlimited greenbacks, before the illegality of the Potter law is adjudicated at Washington. When that decision is reached, we believe it will be then received with general favor throughout the whole country. It is necessary in order to restore public confidence in the rights of private property, now severely shaken.

[1] 2 Dillon, 460.

SUPREME CO

OF THE

UNITED STATES

No. 214, OCTOBER TERM

WILLIAM FREDERICK [illegible],
MOSES TAYLOR, THE [illegible]
TRUST COMPANY, AND THE [illegible]
COMPANY, *Appellants*,

vs.

THE CHICAGO AND [illegible]
COMPANY, GEORGE H. PAUL, [illegible]
BORN, JOHN W HOYT AND [illegible]
Respondents.

BRIEF AND ARGUMENT FOR [illegible]

JOHN W. GAR[illegible]